Supreme Court, U.S.
FILED

09-859 JAN 15 2010

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No.

In The
Supreme Court of the United States

WILLIAM M. WINDSOR,
Petitioner

v.

MAID OF THE MIST CORPORATION and
MAID OF THE MIST STEAMBOAT COMPANY, LTD.,
Respondents

On Petition for Writ of Certiorari
To The United States Court of Appeals for The
Eleventh Circuit

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-13086-DD

MAID OF THE MIST CORPORATION.
MAID OF THE MIST STEAMBOAT COMPANY, LTD.,

Plaintiffs-Counter-Defendants-Appellees,

Versus

WILLIAM M. WINDSOR,

Defendant-Counter-Claimant-Appellant.

On Appeal from the United States District Court for the Northern District of Georgia

---

BEFORE: HULL, MARCUS and PRYOR, Circuit Judges.

BY THE COURT:

After review of the Appellant's motions below, the District Court's Order and Appellant's brief, we DISMISS this appeal AS FRIVOLOUS sua sponte. See Eleventh Circuit Rule 42-4.

All remaining pending motions are DENIED AS MOOT.

FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT

SEP 09 2009

THOMAS K. KAHN
CLERK

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-13086-DD

MAID OF THE MIST CORPORATION.
MAID OF THE MIST STEAMBOAT COMPANY, LTD.,

Plaintiffs-Counter-Defendants-Appellees,

Versus

WILLIAM M. WINDSOR,

Defendant-Counter-Claimant-Appellant.

On Appeal from the United States District Court for the Northern District of Georgia

---

BEFORE: HULL, MARCUS and PRYOR, Circuit Judges.

BY THE COURT:

Appellant's motion for reconsideration of our September 9, 2009, Order dismissing this appeal as frivolous sua sponte is DENIED.

Appellee's Rule 38 motion for sanctions is DENIED.

FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 20 2009

THOMAS K. KAHN
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST CORPORATION
And MAID OF THE MIST STEAMBOAT
COMPANY, LTD.,

Plaintiffs

v. CIVIL ACTION NO.
1:06-CV-0714-ODE

ALCATRAZ MEDIA, LCC, ALCATRAZ
MEDIA, INC. And WILLIAM M.
WINDSOR

ORDER

This closed case is before the Court on Defendant William M. Windsor's motion for recusal [Doc. 361], motion to reopen the case [Doc. 362], motion for sanctions under Federal Rule of Civil Procedure 37 and the Court's inherent power [Doc. 363], and motion for discovery [Doc. 374]. With the exception of Defendant Windsor's motion for discovery, Plaintiffs have filed responses in opposition to each of these motions. [Docs. 366, 367, 370, and 371]. For the reasons stated below, Defendant's motion for recusal [Doc . 361], motion to reopen the case [Doc . 362], motion for sanctions pursuant to Rule 37 and this Court's inherent power [Doc . 363], and motion for sanctions pursuant to Rule 11 [Doc . 364] are DENIED . Defendant's

motion for discovery [Doc . 374] is DISMISSED AS MOOT.

I . Background

The Court will not recount an entire history of this case here. A complete factual background of the case can be found in this Court's Order dated August 9, 2007. [Doc . 251]. On August 9, 2007, the Court granted Maid of the Mist Corporation's and Maid of the Mist Steamboat Company, Ltd.'s ("Plaintiffs') Motion for Summary Judgment on Plaintiffs' claims for tortious interference with business relations, and granted Plaintiffs a permanent injunction against Alcatraz Media, LLC, Alcatraz Media, Inc ., and William M. Windsor, (collectively "Defendants") prohibiting their sale of vouchers or e-tickets for rides on Plaintiffs' boats at Niagara Falls, among other things. The Court denied Defendants' Motion for Summary Judgment, and granted summary judgment for Plaintiffs on Defendants' counterclaims . The Court held that Plaintiffs were entitled to recover attorneys' fees and expenses pursuant to O.C.G.A. § 13-6-11, finding that Defendants had been "stubbornly litigious" as defined under the Act . Plaintiffs filed a motion for entry of a separate judgment on August 20, 2007, and judgment was entered on October 16, 2007. On December 3, 2007, the Court awarded Plaintiffs attorneys' fees and expenses in the amount of $421,773.84. [Doc . 325].

On September 7, 2007, Defendants filed a notice of appeal of this Court's summary judgment

rulings and its injunction order to the United States Court of Appeals for the Eleventh Circuit [Doc . 254], and on December 13, 2007, Defendants filed a notice of appeal as to the award of attorneys' fees and expenses. (Doc. 329].

On September 19, 2008, the Court of Appeals affirmed this Court's grant of summary judgment to Plaintiffs, its denial of summary judgment to Defendants, and its issuance of a permanent injunction. [Doc. 344] . The Court of Appeals also affirmed the Court's decision to grant Plaintiffs attorneys' fees and expenses under Section 13-6-11 of the Georgia Code, although the Court of Appeals vacated the award of attorneys' fees and expenses and remanded to the district court for reconsideration of the award with a full and explicit explanation of the amounts awarded. [Doc. 344]. On October 28, 2008, this Court issued an Order making the Court of Appeals' Mandate the judgment of this Court. [Doc. 346]. The parties later entered into a Consent Final Order and Judgment to resolve all remaining claims in the case, including claims for attorneys' fees, expenses, and costs. [Doc. 354]. The Consent Final Order and Judgment was entered on December 9, 2008. It was signed by counsel for all parties.[1] [Doc. 354].

II. Discussion

[1] While Windsor did not have counsel of record for most of the proceedings, he did when the Consent Order and Judgment was prepared. Counsel's signature is on the Order. [Doc. 354].

A. Windsor's Motion for Recusal [Doc. 361]

On April 24, 2009, Defendant William M. Windsor ("Windsor") filed a motion for the recusal of Judge Evans pursuant to 28 U.S.C. § 144 and 28 U.S.C. § 455, as well as Canons 1, 2, and 3 of the Code of Judicial Conduct, "all other relevant statutory and state and federal case law, as well as the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and the Constitution of the State of Georgia." [Doc. 361, at 1]. Windsor also requests an evidentiary hearing on the motion to recuse. [Doc. 361, at 1.] His motion cites numerous reasons why he believes that recusal is appropriate, all of which are based on prior rulings in this case in Plaintiffs' favor. Plaintiffs have filed a response in opposition. [Doc. 367]. Windsor has filed a reply. [Doc. 381].

Title 28, Sections 144 and 455 of the United States Code provide the applicable legal standards for recusal in this case and are each discussed separately below.

1. 28 U.S.C. § 455

Section 455 provides that:

> (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:

> (1) where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

28 U.S.C. § 455(a), (b) (1) "Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." **Liteky v. United States**, 510 U.S. 540, 555 (1994). The Eleventh Circuit has also held that "prior adverse rulings do not provide a basis for holding that a court's impartiality is in doubt." **Smith v. Hildebrand**, 244 Fed. Appx. 288, 289 (11th Cir. 2007) (unpublished opinion) (citing **Byrne v. Nezhat**, 261 F.3d 1075, 1102-1103 (11th Cir. 2001)).

Windsor's motion for recusal is based solely on this Court's prior rulings in favor of Plaintiffs on a variety of matters. Windsor fails to enumerate any meritorious reasons for anyone to doubt the impartiality of the undersigned other than a general disagreement with the Court's prior rulings.[2] Contrary to Windsor's contentions, the undersigned harbors no animosity toward Windsor and has no bias or prejudice concerning him. In addition, as explained above, adverse rulings, without more, do not constitute a sufficient basis on which to move for recusal. While the issues of law and fact in this case

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[2] (The only extra-judicial bias that Windsor cites in his motion is his belief that Judge Evans discriminated against Windsor because he is male and he is pro se. [Doc. 361, at 20]. Windsor's affidavit gives no foundation for this contention other than that he felt that Judge Evans' rulings are unfair. For the reasons cited above, this contention is insufficient to support a motion for recusal.)

ultimately were not difficult, the litigation produced a very large volume of filings, such that transferring the case to another judge would place a heavy burden on him or her, and would ultimately make no difference as to the outcome of the pending motion to reopen.

2. 28 U.S.C. § 144

In his motion for recusal, Windsor also cites Title 28, Section 144 of the United States Code, which provides:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.
>
> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

28 U.S.C. § 144. In addition to the reasons already cited, Windsor's motion to recuse must be denied as

untimely under 28 U.S.C. § 144, which requires that an affidavit claiming bias must be filed "not less than ten days before the beginning of the term at which the proceeding is to be heard."[3] Windsor waited until after the final judgment in this case was issued to file a motion to recuse, claiming that the delay was due to the fact that Windsor just received and reviewed Plaintiff's "Canadian lease and New York license." [Doc. 361, at 19-20]. This contention does not relieve Defendant of his failure to file the motion to recuse near the beginning of the case, rather than after judgment.

In addition, Section 144 explicitly requires the movant to file along with an affidavit, a certificate of counsel of record stating that the affidavit is made in good faith. 28 U.S.C. § 144. Windsor has failed to file any certificate of counsel of record. On this basis alone, his motion under Section 144 fails.

For the foregoing reasons, Plaintiff's motion for recusal under both 28 U.S.C. §§ 144 and 455 is DENIED. [Doc. 351].

B . Windsor's Motion to Reopen Case [Doc. 362].

Windsor has also filed a motion to reopen the case pursuant to Federal Rule of Procedure 60 (b) (1) - (6). [Doc. 362] Plaintiffs filed a response in opposition. [Doc. 366.] Windsor has filed a reply. [Doc. 385].

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[3] "Proceeding" does not include a Rule 60 (b) motion for relief from judgment. Such an interpretation would inappropriately undermine the finality of judgments.

Federal Rule of Civil Procedure 60(b) governs relief from a final judgment or order. Rule 60(b) provides:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

F.R.C.P. 60(b). Rule 60 also provides that "A motion under Rule 60(b) must be made within a reasonable time--and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1).

Plaintiffs argue that with respect to Windsor's claims under Rule 60 (b)(1), (b)(2) and (b)(3), his motion is untimely under Rule 60(c), as it was brought over a year after the date of the entry of the judgment from which he seeks relief. While Windsor does not specifically state which order or judgment

he seeks relief from, it does appear from his motion that he is seeking relief from the Court's August 7, 2007 order granting Plaintiffs summary judgment and a permanent injunction, and the Clerk's subsequent entry of judgment pursuant to this order on October 16, 2007. [Doc. 281]. [4]
Defendants appealed this order on September 7, 2007. [Doc. 254]. Windsor filed his motion to reopen the case on April 24, 2009, over one and a half years after the entry of the district court's judgment.

There is legal authority that supports Plaintiffs' position that Windsor's motion is untimely as to any claim he has under Rule 60(b) (1)-(3). Rule 60(c) explicitly states that motions under Rule 60(b)(1)-(3) must be brought within one year from the date of entry of the judgment or order or the date of the proceeding . Fed. R. Civ. P. 60(c). The Eleventh Circuit has held that this one-year limitation is not tolled by an appeal. **United States v. One Million Four Hundred Forty-Nine Thousand Four Hundred Seventy-Three Dollars and Thirty-Two Cents ($1,449,473 .32) In United States Currency**, 152 Fed. Appx. 911, 912 (11th Cir. 2005) (unpublished opinion); **Gulf Coast Bldg and Supply Co. v. Int'l Bhd of Elec. Workers, Local No. 480, AFL-CIO**, 460 F.2d 105, 108 (5th Cir . 1972). [5] The First Circuit has found that this time limitation runs

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[4] A separate judgment was entered by the Clerk of the Court as to the Court's award to Plaintiffs of reasonable attorney's fees and expenses on December 3, 2007. [Doc. 327].)

[5] In Bonner v. City of Prichard 661 F .2d 1206, 1207 (11th Cir . 1981), the Eleventh Circuit adopted as binding precedent decisions of the former Fifth Circuit handed down prior to October 1, 1981.

from the date of the entry of judgment in the district court, even where such judgment is appealed, so long as the ruling on appeal does not alter that portion of the judgment that is the subject of the Rule 60(b) motion. See Simon v. Navon, 116 F.3d 1, 3 (1st Cir. 1997). The fact that an attorney representing Windsor signed a jointly submitted Consent Final Order and Judgment, which was signed by the Court on December 9, 2008, also supports Plaintiffs' argument that Windsor's Rule 60(b) motion is untimely. That Order explicitly states that the Order of the Court dated August 9, 2007 [Doc. 251] and the judgment of the Court dated October 16 , 2007 [Doc. 28 1] would remain in full force and effect. [Doc. 353, at 1-2].

It is unnecessary to resolve the question of whether Windsor's Rule 60 (b) motion is timely, however, because his motion has no merit as to any of the claims he has brought under each subsection of Rule 60 (b). In order to obtain relief for excusable neglect under Rule 60(b) (1), Windsor must show that he had a meritorious defense, that Plaintiffs would not be prejudiced if the order was vacated, and that he had a "good reason" for the neglect. Sloss Indus. Corp. v. Eurisol, 488 F.3d 922, 934 (11th Cir. 2007).

Windsor claims that the relevant "mistakes" in the case are that the Court withheld relevant documents from Defendants and that counsel for co-defendant Alcatraz failed to file the deposition of Carolyn Ballard Bazzo. [See Doc. 362, at 4]. Windsor's failure to file the Bazzo deposition is not excusable, given that Plaintiffs twice requested that

Defendants file this deposition before this Court granted summary judgment. [See Docs. 187, 233]. Windsor's claim that this Court withheld evidence from Defendants during discovery merely seeks to rehash a discovery issue that this Court has previously ruled on when it denied Defendants' motion to compel, a decision with which Windsor disagrees. [Doc. 209]. Therefore, Windsor's arguments under Rule 60(b)(1) have no merit.

In order to obtain relief based on newly discovered evidence under Rule 60(b)(2), Windsor must show the following elements: (1) the evidence is newly discovered since the trial; (2) the movant exercised due diligence in discovering the new evidence; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the evidence is such that a new trial would probably produce a new result. **Toole v. Baxter Healthcare Corp.**, 235 F.3d 1307, 1316 (11th Cir. 2000). Windsor claims that the "new evidence" he has discovered since the judgment consists of two contracts that this Court allegedly "withheld" from Windsor, a fax Windsor received from Sandra Carlson on March 3, 2005, documents in the record that counsel for Alcatraz failed to point out to the Court, and declarations of Alcatraz employees and customers that counsel for Alcatraz failed to file with the Court. Windsor's claims as to the two contracts against seeks to rehash the merits of this Court's prior discovery orders, which, as discussed above, is an inappropriate basis for a Rule 60(b) motion. The declarations of Alcatraz employees and customers, and the fax that Windsor received on March 3, 2005, do not constitute "new evidence" that could not have

been discovered with due diligence, as Windsor admits that this evidence was in Windsor's possession before this Court's ruling on summary judgment and it was simply not filed or emphasized to the Court.

Windsor's arguments under Rule 60(b)(3), (4) and (5) are also without merit, as they constitute cursory allegations of dishonesty with no evidentiary support or contentions that the Court should revisit its prior rulings in this case. [See Doc. 362, at 16-22] Such arguments are not proper grounds for relief under Rule 60.

In addition, Windsor's only argument that the judgment is void under Rule 60(b)(4) is his contention that the undersigned did not act in a manner consistent with due process of law, that documents were "withheld" from him, and that Plaintiffs lied. [Doc. 362, at 18]. His allegations are cursory and, while they evidence Windsor's disagreement with the outcome of the case, they do not provide a basis for finding that the judgment is void.

Finally, Windsor is not entitled to relief under Rule 60(b)(6), as his arguments under Rule 60(b)(6) merely rehash the arguments that he presents under the other five subsections of Rule 60(b). Where a party's claim falls under one of the other enumerated sections listed in 60(b), a party has no recourse to Rule 60(b)(6). See **Hall v. State of Alabama**, 700 F.2d 1333 (11th Cir. 1983) (stating "a court may not consider as reasons justifying relief under clause (6) any of the reasons justifying relief under the other

five subsections of the rule") (citing Klapprott v. United States, 335 U.S. 601, 614-15 (1949)) . As Windsor here has raised his claims under Rule 60 (b) (1) - (5), Windsor has no recourse under Rule 60(b)(6).

For the foregoing reasons, Windsor's motion to reopen this case is DENIED. [Doc. 352] .

C . Windsor's Motions for Sanctions Under Rule 37 and the Court's "Inherent Powers" [Doc . 363]

Windsor has also filed a motion for sanctions against Plaintiffs and Plaintiffs' counsel under Federal Rule of Civil Procedure 37 and the Court's "inherent powers," based on Plaintiffs' alleged failure to make disclosures and failure to cooperate in discovery. [Doc. 363]. Plaintiffs filed a response in opposition. [Doc. 370].

1. Rule 37

The Local Rules for the Northern District of Georgia provide that a motion to compel a disclosure or discovery under Rule 37 "must be filed within the time remaining prior to the close of discovery, or, if longer, within ten (10) days after service of the disclosure or discovery response upon which the objection is based." N.D. Ga. L.R. 37.1.B. Windsor's motion under Rule 37, filed on April 27, 2009, does not comply with this requirement, as it was filed long after this Court's final judgment. Nor does Windsor's motion comply with the formatting requirements of Local Rule 37.1, which require a motion to compel a disclosure or a response to

discovery to quote verbatim each discovery request at issue, state the specific objection, the grounds for the objection, and cite authority and a discussion of reasons assigned as supporting the motion. N.D. Ga. L.R. 37.1.A. For the foregoing reasons, Windsor's Motion under Rule 37 is DENIED. [Doc. 363].

2. Inherent Authority

"A court may impose sanctions for litigation misconduct under its inherent power." **Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.**, 56 1 F.3d 1298 (11th Cir. 2009) (citing **Chambers v. Nasco, Inc.**, 501 U.S. 32, 43-44 (1991); **In re Sunshine Jr. Stores**, 456 F.3d 1291, 1304 (11th Cir. 2006)) . This power, however, "must be exercised with restraint and discretion." **Roadway Express, Inc. v. Piper**, 447 U.S. 752, 764 (1980). A court's inherent power to sanction for litigation misconduct is dependent upon finding bad faith. **Eagle Hosp. Physicians, LLC**, 561 F.3d at 1306.

Windsor's arguments in support of his motion consist of cursory allegations regarding the discovery process. Many of these allegations have already been heard and ruled upon by the Court. The Court finds that there is not any evidence that Plaintiffs acted in bad faith in the course of this litigation, and the Court therefore declines to use its inherent powers to sanction Plaintiffs. Further, Windsor's motion is too late. For the foregoing reasons, Windsor's motion to sanction Plaintiffs pursuant to the Court's inherent authority is DENIED.

D . Windsor's Motions for Sanctions Under Rule 11 [Doc. 364]

Windsor has also filed a motion for sanctions and a motion to dismiss under Rule 11 against counsel for Plaintiffs for their allegedly false filings. Windsor filed this motion on April 27, 2009. [Doc. 3&4] Plaintiffs filed a response in opposition. [Doc. 371]. In his motion, Windsor complains about a large number of Plaintiffs' filings, including the Complaint, affidavits, responses to interrogatories, document productions, as well as motions and briefs filed by Plaintiffs during the course of the litigation in this case.

Windsor's motion is entirely lacking in substantive merit.

The Court also must deny Windsor's motion for sanctions because it is untimely and because it fails to comply with Rule 11's safe harbor requirements. "A motion for sanctions under Rule 11 . . . should be denied when the moving party fails to act promptly." Price v. Hawaii, 789 F. Supp. 330, 335-36 (D. Haw. 1992). The Advisory Committee on the Rules commented as follows:

> Ordinarily the motion should be served promptly after the inappropriate paper is filed, and, if delayed too long, may be viewed as untimely . . . Given the "safe harbor" provisions...a party cannot delay serving its Rule 11 motion until conclusion of the case (or judicial rejection of the offending contention).

Fed. R. Civ. P. 11 (Notes of Advisory Committee on Rules to 1993 Amendment). Rule 11's "safe harbor" provision provides that "A motion for sanctions . . . must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets." Fed. R. Civ. P. 11(c)(2). This rule requires that the party seeking sanctions "must serve the Rule 11 motion on the opposing party at least twenty-one days before filing the motion with the district court, and sanctions may be sought only if the challenged pleading is not withdrawn or corrected within twenty one days after service of the motion." ***Brickwood Contractors, Inc. v. Datanet Eng, Inc.***, 369 F. 3d 385, 389 (4th Cir. 2004).

Due to this safe harbor provision, several circuits have held that a court cannot grant a motion for sanctions filed after the conclusion of the proceedings, because the opposing party is thereby deprived of a chance to cure or withdraw the offending filing. "[A] party cannot wait to seek sanctions until after the contention has been judicially disposed. A party must now serve a Rule 11 motion on the allegedly offending party at least twenty-one days prior to the conclusion of the case or judicial rejection of the offending contention." **Ridder v. Springfield**, 109 F.3d 288, 295 (6th Cir. 1997); see also **Brickwood Contractors, Inc.**, 369 F.3d at 389-90 (holding that a district court lacks authority to impose requested sanctions where the movant files a motion for sanctions after the close of proceedings); **In re Pennie & Edmunds LLP**, 323 F.3d 86, 89, nn.1,

2 (2d Cir. 2003); see also **Price**, 789 F. Supp. at 335-36 (denying a motion for sanctions under Rule 11 due to untimeliness where the motion was filed more than two years after the dismissal of the case, and after the dismissal was affirmed on appeal). In both **Brickwood** and **Ridder**, the Courts of Appeal held that a party's motion for Rule 11 sanctions was untimely because it was filed after the entry of summary judgment and therefore deprived the offending party of its chance to withdraw or cure the offense. **Brickwood**, 369 F.3d at 390; **Ridder**, 109 F.3d at 297.

In a case involving a motion for sanctions under Rule 9011 of the Bankruptcy Code,[6] the Eleventh Circuit agreed with the reasoning of these courts and held that "the service and filing of a motion for sanctions `must occur prior to final judgment or judicial rejection of the offending' motion." **In re Walker**, 532 F.3d 1304, 1309 (11th Cir. 2008) (quoting **Ridder**, 109 F.3d at 297). In **Walker**, the Court upheld the district court's denial of a motion for sanctions because the offending motion, on which the motion for sanctions was

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[6] Federal Rule of Bankruptcy Procedure 9011 contains a similar safe harbor provision as Federal Rule of Civil Procedure 11. Rule 9011 (C)(1)(A) provides in part: A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected . . . Fed. R. Bankr. P. 9011 (c) (1) (A).)

based, had already been denied by the court when the motion for sanctions was filed. 532 F.3d at 1308-1309.

Given this legal authority, the Court finds that it lacks authority to grant Windsor's motion for sanctions under Rule 11 because it was filed after the Court's entry of summary judgment and after that ruling was affirmed by the Court of Appeals. Considering Windsor's motion on the merits would deprive Plaintiffs of the safe harbor provisions in Rule 11 as they have had no opportunity to cure any of their allegedly sanctionable filings. Windsor states in his motion that "Mr. Anderson was long ago advised of Windsor's intent to file a Motion for Sanctions under Rule 11," but an informal warning does not satisfy the safe harbor provision in Rule 11. See **Barber v. Miller**, 146 F.3d 707, 710 (9th Cir. 1998) ("It would . . . wrench both the language and purpose of the amendment to the Rule to permit an informal warning to substitute for service of a motion").

For the foregoing reasons, Windsor's motion for sanctions under Rule 11 is DENIED. [Doc. 364].

E . Windsor's Motion for Discovery [Doc . 37 4]

Windsor has also filed a Motion for Discovery, whereby Windsor argues that he must be able to depose counsel for Plaintiffs in order to support his various pending motions before the Court. [Doc. 374). Because the Court has denied Windsor's

motion to reopen the case, his Motion for Discovery is now DISMISSED AS MOOT. [Doc. 374].

F. Plaintiffs' Requests for Attorneys' Fees and Expenses

1. Section 13-6-11 of the Georgia Code

In their responses to each of Windsor's motions, Plaintiffs argue that they are entitled to costs and attorneys' fees under Section 13-6-11 of the Georgia Code. Section 13-6-11 provides that expenses of litigation may be allowed as part of the damages "where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense." Ga. Code Ann. § 13-6-11. While it appears Windsor filed his meritless motions only to cause Plaintiffs unnecessary trouble and expense, Plaintiffs' expenses in defending against his motions were not incurred in their prosecution of their own claims. Section § 13-6-11 contemplates that fees and expenses will only be recovered as part of the damages in a plaintiff's prosecution of their own claims. Therefore, the Court may not award such expenses for Plaintiffs' defenses of these motions under Section 13-6-11. **See Lineberger v. Williams**, 393 S.E.2d 23, 26 (Ga. Ct. App. 1990) (holding that O.C.G.A. 13-6-11 does not provide for the recovery of attorneys' fees incurred in defending against a defendant's counterclaim).

2. **Federal Rule** of Civil Procedure 37(a)(5)(b)

Plaintiffs have requested that they be awarded attorneys' fees and expenses for defending against Windsor's Rule 37 motion under Federal Rule of Civil Procedure 37(a)(5)(B), which provides that if a motion to compel brought under Rule 37 is denied, the court "must, after giving the opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party of deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorneys' fees. But the court must not order payment if the motion was substantially justified or other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(a)(5)(B).

While Windsor's motion under Rule 37 clearly lacks merit, Plaintiffs' request for sanctions must be denied. Plaintiffs' request simply is not apt. Rule 37 provides sanctions for abusive discovery, and also for resisting abusive discovery. However, the applicability of Rule 37 assumes that some form of discovery is otherwise appropriate. Here, the case is over; no discovery is appropriate.

III. Conclusion

The Court has carefully considered the parties' filings. In summary, Windsor's motion for recusal [Doc. 361] and Windsor's motion to reopen the case [Doc. 362] are DENIED. In addition, Windsor's motion for sanctions pursuant to Rule 37 and the Court's inherent power [Doc. 363] and motion for sanctions pursuant to Rule 11 [Doc. 364] are DENIED. Windsor's motion for discovery [Doc. 374] is DISMISSED AS MOOT. Plaintiffs' requests

for attorneys' fees and expenses incurred in responding to Windsor's motions are DENIED.

SO ORDERED, this 22 day of May, 2009.

s/
ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE

FILED IN CHAMBERS
U.S.D.C. – ATLANTA

MAY 22 2009

JAMES N. HATTEN, CLERK
BY: S/ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST CORPORATION and MAID OF THE MIST STEAMBOAT COMPANY, LTD.

Plaintiffs

v. CIVIL ACTION NO. 1:06-CV-0714-ODE

ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC. And WILLIAM M. WINDSOR

Defendants

ORDER

This civil suit is before the Court on Defendant William M. Windsor's Motion for Reconsideration of Motion for Discovery filed June 8, 2009.

The record reflects that Judgment was entered in Plaintiffs' favor on October 16, 2007. On December 3, 2007, the Court awarded Plaintiffs attorneys fees and expenses in the amount of $421,773 .84. Defendants filed a Notice of Appeal; on September 19, 2008, the Court of Appeals affirmed the grant of summary judgment to Plaintiffs, but vacated the award of attorneys fees and expenses and remanded to this Court for reconsideration of the award of attorneys fees and

expenses with a full and explicit explanation of the amounts awarded. On October 28, 2008, this Court issued an Order making the Court of Appeals' mandate the judgment of this Court. Subsequently, all parties entered into a Consent Final Order and Judgment which resolved claims for attorneys fees, expenses and costs. The Consent Final Order and Judgment was entered on December 9, 2008.

On April 24, 2009, Defendant Windsor filed a Motion to Reopen this case pursuant to Rule 60 (b)(1)-(6) of the Federal Rules of Civil Procedure. He simultaneously filed other motions, including a motion for Discovery.

On May 22, 2009, the undersigned entered an Order denying Defendant Windsor's Motion to Reopen the Case and denying certain other motions as well. Because the motion to reopen judgment was denied, the motion for discovery was dismissed as moot on May 22, 2009.

Defendant Windsor filed the instant Motion for Reconsideration of Motion for Discovery on June 8, 2009. He filed his Notice of Appeal concerning this Court 's Order denying the Motion to Reopen the case, plus other motions, on June 15, 2009. A letter notice to Mr. Windsor of the status of the appeal, a copy of which was sent to the undersigned, contains this notation: "This Court [the Court of Appeals] awaits District Court's ruling on 6/8/2009 Motion for Reconsideration of Motion for Discovery by William M. Windsor."

Because the instant case is a closed case, and the Court has denied Windsor's Motion to Reopen Case, there is no need for discovery. Accordingly, Defendant Windsor's Motion for Reconsideration of Motion for Discovery [#410] is hereby DISMISSED as moot.

The Clerk is directed to forward a copy of this order to the United States Court of Appeals for the Eleventh Circuit.

SO ORDERED, this 2 day of July, 2009.

/s
ORINDA D. EVANS
United States District Judge

FILED IN CHAMBERS
U.S.D.C Atlanta

JUL 2 2009

James N. Hatten, Clerk
BY: S/ DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST CORPORATION and MAID OF THE MIST STEAMBOAT COMPANY, LTD.,	)
Plaintiffs,	)
v.	CIVIL ACTION NO: 1:06-CV-0714-ODE
ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC. and WILLIAM M. WINDSOR,	)
Defendants.	)

DEFENDANT WILLIAM M. WINDSOR'S MOTION TO REOPEN CASE

Comes Now Defendant William M. Windsor ("Windsor"), and under Rule 60 (b) of the Federal Rules of Civil Procedure, files DEFENDANT WILLIAM M. WINDSOR'S MOTION TO REOPEN CASE ("Motion to Reopen"). In support of this Motion, Windsor relies upon his Memorandum of Law in Support of Defendant William M. Windsor's Motion to Reopen Case and the First, Second, and Fourth Declaration of William M. Windsor in Support of the Motion to Reopen Case, as well as on Defendant William M. Windsor's Motion to Recuse and affidavits and exhibits thereto.

1. Three managers of Maid of the Mist are guilty of hundreds of counts of perjury and have committed a conspiracy to commit fraud. Christopher Glynn, Timothy P. Ruddy, and Robert J. Schul have lied repeatedly under oath and have conspired to commit fraud against Alcatraz Media and William M. Windsor. This proceeding began in August 2005 with a sworn Verified Complaint that consisted of perjured testimony by Christopher Glynn ("Glynn"), President, of Maid of the Mist Corporation ("Maid US") and Maid of the Mist Steamboat Company, Ltd. ("Maid Canada") (jointly "Plaintiffs" or "Maid"). 46 of the 50 paragraphs were false or incorrect and/or not based upon the personal knowledge of Glynn as he swore. The lies, false sworn pleadings, false pleadings, and discovery abuse continued throughout this proceeding. This deprived the Defendants of any opportunity for a fair trial. The dishonesty of Maid and Maid's attorneys was compounded by the mistakes of Judge Orinda D. Evans ("Judge Evans") who after reading, hearing, and apparently believing the lies of Maid, withheld documents from the Defendants, violated the legal rights of the Defendants by denying the most basic discovery, and acted without the impartiality required of a judge. The attorney for Alcatraz Media ("Alcatraz") added to the seemingly impossible task of litigating against dishonest Plaintiffs and a biased judge by failing to file the most important deposition in the case as well as other important proof.

2. This case is a travesty of justice. It is so bad that a new judge will likely look at the facts and

have trouble believing that there was so much wrongdoing. But Windsor has documented it all after spending months of his life in the process. The First Declaration of William M. Windsor in Support of Motion to Reopen Case ("First Windsor Dec") is attached as Exhibit A.

3. Fortunately, Federal Rule of Civil Procedure 60 (b) provides that on motion and just terms, the Court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

4. Rule 60(b) is designed to serve the ends of justice. There has been no justice in this case for a variety of reasons. This Motion is based on Rule 60(b)(1), Rule 60(b)(2), Rule 60(b)(3), Rule 60(b)(4), and Rule 60(b)(5); or Rule 60(b)(6).

5. Windsor will demonstrate that the grounds set forth in Rule 60(b) exist. There are very unusual circumstances in this case. The mere magnitude of the wrongs makes this a most unusual circumstance. Exhibit 16 to the First Declaration of

William M. Windsor is questions that a new judge may want to ask as this Motion is considered.

6. Rule 60(b)(1) -- mistake, inadvertence, surprise, or excusable neglect.

7. Mistakes in this case include the following: (1) Judge Evans withheld relevant documents from the Defendants, and (2) G. Brian Raley ("Mr. Raley"), attorney for Alcatraz, failed to file the most important deposition in the case, the Deposition of Carolyn Ballard Bazzo ("Bazzo Depo"). [First Windsor Dec ¶ 7.]

8. The Defendants discovered in March 2009 that Judge Evans withheld important documents from the Defendants during Discovery. [First Windsor Dec -- ¶ 8.] This new evidence is detailed in paragraphs 77 to 123.

9. The failure to timely file the Bazzo Depo may be considered under Rule 60(b)(1) as "excusable neglect." The Supreme Court has "established a four-part balancing test" to determine "excusable neglect." ***Pincay v. Andrews***, 389 F.3d 853, 855 (9th Cir. 2004) (en banc), *cert. denied*, 125 S.Ct. 1729 (2005), *citing* ***Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship***, 507 U.S. 380 (1993). *Pioneer* established an equitable approach which considers "all relevant circumstances," including "(1) the danger of prejudice to the non-moving party, (2) the . . . potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4)

whether the moving party's conduct was in good faith." *Pioneer*, 507 U.S. at 395.

10. The Bazzo Depo provides evidence of what actually happened in this case and will serve justice in this case and should not be viewed as prejudicing the Plaintiffs. The case will proceed on the merits. Having to incur the risk and cost of a contested hearing does not constitute prejudice. This will simply restore the parties to an even footing. [First Windsor Dec -- ¶ 10.]

11. The impact on the proceedings should be to give the Defendants the opportunity to have their case heard by a jury. Windsor hopes this will change the outcome of the trial, because Carolyn Ballard Bazzo ("Bazzo") confirms the oral contract for the 2005 season that Judge Evans improperly ruled did not exist. The failure to file the Bazzo Depo was not done out of bad faith. It was simply a most unfortunate mistake. The Bazzo Depo was taken by Windsor while acting pro se, and Windsor was followed in a separately noticed deposition by Carl Hugo Anderson ("Mr. Anderson") for the Plaintiffs. There was one transcript rather than two. There was confusion over who was going to file the transcript. On January 22, 2007, Mr. Anderson filed a motion stating that he intended to file the Bazzo Depo when he received it from the court reporter. [Docket # 145.] Windsor thought Mr. Anderson or Mr. Raley would file the deposition with the Court. Windsor never had the transcript because the court reporter sent it to the offices of Mr. Anderson and Mr. Raley. Windsor was unaware that the deposition had not been filed until he read it

in the Summary Judgment Order. Mr. Anderson attended the Bazzo Depo conducted by Windsor, and he conducted his own deposition of Bazzo immediately thereafter, so he was well aware of her testimony. Maid's attorneys had been in possession of all 91 of the documents used in the Bazzo Depo for many months, and they knew about the oral contract even prior to the filing of the lawsuit. Mr. Raley's summary judgment filings included facts with citations to the Bazzo Depo, so the content existed in the summary judgment filing – just not the backup. [Docket # – Page ___, Lines ___.] A party should not lose a lawsuit over the failure to file a deposition that both parties participated in. Windsor's conduct was certainly in good faith. [First Windsor Dec ¶ 11.]

12. The Bazzo Depo detailed Bazzo's conversation with Sandra Carlson ("Carlson") on March 3, 2005 when Carlson entered into an oral contract to allow Alcatraz to sell "for the entire 2005 season." Bazzo represents a vital second witness testifying to the most important fact in the case. [First Windsor Dec ¶ 12.]

13. Worst case, the oral contract between the parties should have been a fact issue for the jury to decide. There are three witnesses. Bazzo and Windsor have reported the God's honest truth while attorneys for Maid have not. The law says that when there is a fact issue, the case cannot be decided on summary judgment. If there was a contract, then nothing the Defendants did could be wrong, and everything that the Plaintiffs did was wrong. [First Windsor Dec ¶ 13.]

14. Unfortunately, the deposition was not filed. It should now be considered. This isn't totally new evidence, but evidence never considered because of a mistake. [First Windsor Dec ¶ 14.]

15. **Rule 60(b)(2) -- newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b).**

16. Since the Court entered a Final Order and Judgment in this matter on December 9, 2008, Windsor has learned of compelling new evidence that was concealed from the Defendants by Maid and Judge Evans. This requires that this matter be reopened. Judge Evans withheld two contracts from the Defendants that provide the motive for the wrongful actions of Maid. Windsor also found a fax that disproves a key claim of Maid in disputing the existence of an oral contract. Accordingly, the Court should reopen this matter and allow the Defendants to develop a full and complete record through discovery, including the deposition of relevant people. [First Windsor Dec ¶ 16.]

17. In this proceeding, the Court has issued various orders including a Preliminary Injunction Order [Docket # 33], a Summary Judgment Order [Docket # 251], and a Final Order and Judgment entered on December 9, 2008. [Docket # 354.] The Defendants reluctantly settled the case in December 2008 after the case was remanded after the Defendants' appeal. The Defendants shouldn't have to pay Maid a cent, but

they settled to avoid the risk of Judge Evans making the Defendants pay even more. [First Windsor Dec ¶ 17.]

18. The Defendants have never wavered from the position that Judge Evans was hoodwinked by Maid and Maid's attorneys. The Defendants have been working for the last six months with people in Niagara Falls who have been investigating various matters relating to Maid. This has enabled the Defendants to discover important new evidence. [First Windsor Dec ¶ 18.]

19. The new evidence includes (1) two contracts that change the entire case and prove dishonesty by Maid and Maid's attorneys (Exhibits 1 and 2 to the First Windsor Dec), (2) a fax from Sandra Carlson for Maid that proves dishonesty by Maid and must force the Court to reconsider the position that there was no oral contract (Exhibit 3 to the Windsor Dec), (3) Declarations of Alcatraz employees and customers, and (4) information about fraud and misrepresentations of Maid and improper actions of Maid's attorneys. [First Windsor Dec ¶ 19.]

20. **NEW EVIDENCE #1 -- The first new evidence has to do with contracts with The Niagara Parks Commission and New York State Parks.**

21. Important new information has been discovered that was concealed from the Defendants by Maid. This evidence revealed one of the most important facts that could have been discovered in this case. If this information had been shared with the Defendants rather than concealed by Maid, there

likely never would have been a lawsuit, and the Defendants would not have spent a fortune in legal fees. [First Windsor Dec ¶ 21.]

22. The Defendants' Requests for Production of Documents in 2005 and 2006 included contracts with The Niagara Parks Commission ("NPC") and New York State Parks ("OPRHP"). Maid refused to produce those documents claiming "irrelevant, immaterial, ill-defined, and not reasonably calculated to lead to the discovery of admissible evidence." [Docket # ___.] Maid further claimed that these agreements represented "confidential, proprietary business information" and were "irrelevant to this proceeding" even though these are documents with two government entities that have provided them freely in other legal actions. Furthermore, these documents were most relevant. [Exhibit 1 and Exhibit 2 to the First Windsor Dec.] [First Windsor Dec ¶ 22.]

23. Judge Evans ruled in response to Defendants' Motion to Compel [Docket # 135 and 209.] that these documents were not relevant to the case. Maid misrepresented the facts and deceived Judge Evans with false claims. [First Windsor Dec ¶ 23.]

24. At a hearing in chambers on February 2, 2007, Judge Evans required that Maid produce the NPC Lease and the New York License under seal for an in camera inspection to determine if the documents contained information that would be

relevant to the Defendants in this proceeding. [Docket # 174.]

25. Maid produced documents for the in camera inspection on February 15, 2007. [Docket # 168.]

26. Judge Evans failed to respond to Windsor's February 26, 2007 motion or to provide the Defendants with any indication of the results of her examination until she issued an Order on April 20, 2007. In that Order [Docket # 209], Judge Evans stated: "Production is not warranted." Judge Evans' failure to respond to the Defendants on this in camera inspection for two months while the Defendants were answering Maid's summary judgment motion was unfair and shows bias for the Plaintiffs. [First Windsor Dec ¶ 26.]

27. The Defendants finally obtained copies of these contracts in late March 2009 through other legal actions. The lease ("Canadian Lease") between The Niagara Parks Commission ("NPC") and Plaintiff Maid of the Mist Steamboat Company Limited ("Maid Canada") is attached as Exhibit 1 to the First Windsor Dec. The license contract ("New York License") between New York State Office of Parks, Recreation and Historic Preservation ("OPRHP") and Plaintiff Maid of the Mist Corporation (Maid US) is attached as Exhibit 2 to the First Windsor Dec. [First Windsor Dec ¶ 27.]

28. Immediately upon reviewing these documents, it was apparent to the Defendants that

the documents did include information that was relevant to the Defendants' case. The documents include information that Maid did not have a valid basis for excluding from the discovery process. [First Windsor Dec ¶ 28.]

29. This information provides an explanation for the lies and deceit of Maid in this matter. This information establishes a motive for the wrongful actions of Maid. This information establishes that Maid had unclean hands. This information establishes additional proof of the fraud and dishonesty of Maid as these facts were concealed throughout the litigation. [First Windsor Dec ¶ 29.]

30. This new information should change the way the Court looks at this case. [First Windsor Dec ¶ 30.]

31. The new information explains why Maid was lying when they claimed complaints about pricing with Alcatraz and demanded that Alcatraz lower its retail prices to match the Plaintiffs' retail prices. Maid had a pricing problem, but it was with NPC and OPRHP; Maid was in breach of contract. [First Windsor Dec ¶ 31.]

32. The Plaintiffs concealed information because the Defendants would have conducted discovery with NPC and OPRHP that would have revealed that the Plaintiffs were in breach of contract, had obtained a trademark improperly, and had made a material misrepresentation to obtain the New York License. A $1.3 billion dollar business

was at risk, so Maid lied – again and again and again. [First Windsor Dec ¶ 32.]

33. **NEW EVIDENCE #2 -- The second piece of new evidence is a fax from Sandra Carlson to Bill Windsor dated March 3, 2005.**

34. Carlson sent Windsor a fax on March 3, 2005. In the remarks section of the Fax Cover Sheet, Carlson wrote "as requested." [Exhibit 3 to First Windsor Dec.] This establishes that Carlson spoke to Windsor on the date that he testified they entered into a contract for the entire 2005 season. Maid and Carlson stated that no such conversation ever took place and that Carlson didn't even know Windsor's name "until much later in 2005," but this document proves that she was lying. She clearly knew who Bill Windsor was on March 3, 2005 as she addressed a fax to him on that date. Maid's entire case hinged on trying to claim there was no oral contract for the 2005 season. [First Windsor Dec ¶ 34.]

35. The newly obtained evidence directly contradicts findings of fact presented to the Court by Maid. [First Windsor Dec ¶ 35.]

36. **NEW EVIDENCE #3 -- Mr. Raley failed to inform the Court of the importance of documents that were in the record.**

37. Documents in the record defeat any claim of damages that Maid has alleged on tortious interference. Exhibit S-11 to the Deposition of Robert J. Schul ("Schul Depo") includes copies of the

checks that Alcatraz paid to Maid. These checks and Maid's accounting records (Exhibits S-12 to S-18 to the Schul Depo) will show that Alcatraz paid Maid $10,249.46 more than was due to Maid based upon Maid's invoices. Alcatraz did not request a refund, but Maid returned the money to Alcatraz unannounced a month after this lawsuit was filed. This was more than enough money to cover the costs of all of the Alcatraz customers who Maid refused to serve in August and September 2005. Maid had no damages as they had the money to cover all costs, and if there was any monetary damage, it was caused by Maid's actions. [First Windsor Dec ¶ 37.]

38. **NEW EVIDENCE #4 – Mr. Raley failed to file declarations of Alcatraz employees. These declarations provide important evidence on various aspects of this case.** [First Windsor Dec ¶ 38.]

39. One of the most important is the Declaration of Sonya Chase ("Chase"). Chase has been employed by Alcatraz as Bookkeeping Manager and Ticketing Manager since February 2005. [First Windsor Dec ¶ 39.]

40. Ms. Chase's declaration (Chase Dec") details payments made to the Plaintiffs with check copies and invoice copies. [First Windsor Dec ¶ 40.]

41. Mr. Raley failed to file the Chase Dec, and he failed to inform the Court of the importance of several of the items included therein. Chase states: "On September 27, 2005, Maid of the Mist issued check 10405 to Alcatraz Media in the amount

of $3,577.50. [Exhibit 23 to the Chase Dec.] On September 30, 2005, Maid of the Mist issued check 93667 to Alcatraz Media in the amount of $588.60. Check #11484 date August 2, 2005 in the amount of $3,916.21 and check #12199 dated September 24, 2005 in the amount of $2,167.15 were returned by Maid of the Mist. [Exhibit 24 to the Chase Dec.] These checks total $10,249.46. The lawsuit was filed on August 29, 2005. At the time the lawsuit was filed, the Plaintiffs held $10,249.46 of Alcatraz's money, more than enough to cover the cost of every E-Ticket that Alcatraz issued. Maid returned this money a month after this lawsuit was filed. The first check returned was #11484 dated August 2, 2005 in the amount of $3,916.21. August 2 was before the Plaintiffs started denying the E-Tickets of Alcatraz's customers. [First Windsor Dec ¶ 41.]

42. In addition, the Defendants established that Maid billed and collected $495.80 from Alcatraz for customers who were improperly denied the use of E-Tickets purchased before the so-called "termination date." [First Windsor Dec ¶ 42 and Exhibit 13.] Alcatraz also had to refund approximately 80 customers with valid E-Tickets purchased prior to the so-called "Termination Date."

43. The Declarations of Alcatraz's employees are attached to the Fourth Declaration of Defendant William M. Windsor ("Windsor Dec 4") as Exhibits 1 to 10. [Fourth Windsor Dec ¶ 43.]

44. **NEW EVIDENCE #5 – Mr. Raley failed to file the declarations of Alcatraz Media customers.** [First Windsor Dec ¶ 44.]

45. In total, the Defendants obtained affidavits from 169 people representing 762 customers of 1,802 customers before Maid terminated the contract. These declarations provide convincing proof that the complaints alleged by Maid did not take place. The Court is reminded that Maid did not produce any declarations from any customers prior to the termination date stating that they had complaints against Alcatraz, but the Verified Complaint stated that there were daily complaints. [First Windsor Dec ¶ 45.]

46. The Declarations of Alcatraz's customers are attached to the Fourth Windsor Dec as Exhibits 67 to 213 [Windsor Dec #4]. [First Windsor Dec -- ¶ 46.]

47. **Rule 60(b)(3) -- fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;** [First Windsor Dec ¶ 47.]

48. Judgment was obtained by Maid due to fraud, misrepresentation, and misconduct. This conduct prevented the Defendants from being able to fully and fairly presenting their case. This Court's judgment was tainted by fraud, misconduct, and misrepresentation. [First Windsor Dec ¶ 48.]

49. Maid withheld documents, fabricated evidence, gave perjured testimony, and abused the legal system in a wide variety of ways. Judge Evans denied the Defendants relief from judgment because she did not stop Maid from committing perjury,

withholding documents, fabricating evidence, and perverting the legal system. The actions of Maid and Judge Evans deprived the Defendants of the opportunity to be heard. [First Windsor Dec ¶ 49.]

50. Windsor provided details about the fraud and misconduct of Maid to the attention of Judge Evans on February 2, 2007 [Docket # 174], but she never did anything about it. [Docket # 174, Page 34 Lines 4 to 6.] Windsor provided additional details in an affidavit dated November 19, 2007, attached as Exhibit 14 to the First Windsor Dec. [First Windsor Dec ¶ 50.]

51. Windsor details the fraud, misrepresentation, and misconduct in the Third Declaration of Defendant William M. Windsor (Windsor Dec #3), attached as Exhibit 2. This is clear and convincing evidence. Maid's managers gave false testimony in affidavits, depositions, and at the Preliminary Injunction Hearing. [First Windsor Dec ¶ 51.]

52. Summary judgment and Final Judgment were granted based upon misrepresentations so egregious as to amount to a fraud upon the court. [First Windsor Dec ¶ 52.]

53. Windsor also submits that a hearing is needed with Judge Evans as a witness so the Defendants may inquire into what documents Judge Evans was given under seal for an in camera inspection. Did Maid submit false documents, or did

Judge Evans withhold the evidence? [First Windsor Dec ¶ 53.]

54. Mr. Raley failed to file a Rule 11 motion with proof of hundreds of lies and perjury by the Plaintiffs. Exhibits 1 to 23 to Windsor Dec # 3 detail the Rule 11 violations, lies, and perjury. [First Windsor Dec ¶ 54.]

55. Windsor prays that the Court will reopen the case so the truth can come out. [First Windsor Dec ¶ 55.]

56. Rule 60 (b) (3) provides that a court may relieve a party or a party's legal representative from a final judgment, order, or proceeding based upon fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

57. The Defendants can show that Maid committed fraud, misrepresentation, and perjury, and Maid's attorneys participated knowingly in these wrongs and suborned perjury. [First Windsor Dec ¶ 57.]

58. This is a case where the Defendants did not act improperly but have incurred a fortune in legal fees due to the wrongful actions of Maid. [First Windsor Dec ¶ 58.]

59. Rule 60(b)(4) -- the judgment is void.

60. The Final Judgment in this case should be void because Judge Evans did not act in a manner

consistent with due process of law. Judge Evans withheld documents from the Defendants, denied reasonable discovery to the Defendants, allowed the legal process to be perverted with all forms of dishonesty by Maid. [First Windsor Dec ¶ 60.]

61. **Rule 60(b)(5) -- the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable.**

62. The Final Judgment in this case includes an injunction. Rule 60(b)(5) authorizes a court to grant relief from final judgment if "applying it prospectively is no longer equitable." [First Windsor Dec ¶ 62.]

63. There were clearly erroneous factual findings in this case as well as erroneous legal findings, and a manifest injustice. [First Windsor Dec ¶ 63.]

64. One additional piece of new information has to do with the idea that Alcatraz didn't have the right to sell the Plaintiffs' tickets. [First Windsor Dec ¶ 64.]

65. Judge Evans claimed this was a "simple case" because she felt that Maid had the right to refuse to let Alcatraz sell Maid tickets. Alcatraz argued that it had the right to sell any tickets lawfully obtained. Alcatraz even became a registered ticket broker in Georgia, which legally allows tickets to be purchased from any source and resold. Judge Evans held to that misguided notion

and ruled against the Defendants on the basis of that belief with no legal justification. [First Windsor Dec ¶ 65.]

66. Judge Evans asked in Chambers on February 2, 2007 how Alcatraz felt it had the right to sell tickets. For starters, Alcatraz was granted the right to sell tickets "on credit" by the Plaintiffs in a written contract. Then there was an oral contract for the entire 2005 season that Alcatraz obtained because of concerns over strange behavior by Maid. It is also clearly established that anyone can sell a ticket for any event or attraction without the authorization of the event or attraction. Tens of millions of tickets are sold each year by ticket brokers and individuals online, on eBay, in the newspaper, etc. None of these sellers are "authorized." So, Alcatraz did not need any authorization from Maid to sell its tickets. In addition, travel agents and other types of reservations services sell tickets and handle reservations for their clients without any authorized agent relationship with the events, attractions, or services. The effect of Judge Evans' ruling would be to make a new law that makes the actions of ticket brokers, consumers, and travel agents illegal, AND subjects them to pay the legal expense of the events, attractions, and services that choose to sue them. This is not right! [First Windsor Dec ¶ 66.]

67. Windsor believed that Alcatraz had the legal right to sell tickets that it obtained from lawful sources, but he felt the practice is so universally accepted that there is no law about it and there was no need to cite any cases. Windsor has now learned

that there is an applicable legal doctrine – the "first sale doctrine." [See ***Citizens of Humanity, LLC vs. Costco Wholesale Corporation*** in the Court of Appeals of the State of California Second Appellate District Division Three No. B204117 (2/11/2009).] The Costco decision was rendered in 2009, so the Defendants did not have this to reference during these proceedings prior to now. [First Windsor Dec ¶ 67.]

68. When a manufacturer (Plaintiffs) parts with his goods (tickets), and they go upon the market, any third person (Alcatraz) has the right to purchase and sell them as he pleases, without the consent of the manufacturer (Maid); and the courts will not aid the manufacturer (Maid), under the guise of protecting his trade-mark or the suppression of unfair competition, by permitting him in such litigation to discover the sources from which an objectionable merchant – to him (Alcatraz) – obtains his supply. [First Windsor Dec ¶ 68.]

69. The "competition privilege" should have provided a complete defense to Maid's claim of intentional interference with prospective economic advantage, as Alcatraz did not commit an unlawful or illegitimate act. [First Windsor Dec ¶ 69.]

70. The ruling in this case could establish a major number of precedents that change important laws in Georgia. As Windsor sees it, no one can legitimately fight a lawsuit without expecting to pay all legal fees if they lose. Tortious interference does not require damages. Tortious interference does not have to meet the tests that have long been used.

Sworn complaints do not have to have a shred of truth. There are no penalties for discovery abuse; you can tamper with witnesses, conceal documents, alter documents, refuse to produce documents, and produce your important documents after discovery has closed. You do not have to produce your witnesses for depositions, but you can then use affidavits from them and deny the opposing party the ability to cross-examine. The legal basis for counterclaims is irrelevant, and the courts don't have to even deal with those issues. Slander is acceptable. No one is allowed to make a factual complaint to the Better Business Bureau. Courts may stop people from doing perfectly legal things. Courts do not have to go by the law. Courts do not have to consider the facts. Fact issues are no longer issues for a jury to consider; judges are allowed to handle jury trials themselves without involving actual jurors. The Georgia ticket broker laws are null and void, and no company or individual may ever sell a ticket or anything else that they acquired from someone else. Appeals have been eliminated as the law and the facts are not going to be considered by the Court of Appeals. [First Windsor Dec ¶ 70.]

71. **Rule 60(b)(6) -- any other reason that justifies relief.**

72. There are certainly exceptional circumstances in this case. This is a case where relevant documents have been withheld from the Defendants by both Maid and the Court. There have been too many wrongs to list them again. [First Windsor Dec ¶ 72.]

73. Judge Evans' actions prevented the Defendants from being able to handle this lawsuit as they needed while dealing with dishonest Plaintiffs and dishonest attorneys. This is an unusual and extreme situation where principles of equity *mandate* relief. The "exceptional circumstance" in this case is the totality of the mistreatment of the Defendants. [First Windsor Dec ¶ 73.]

74. Please consider Rule 60(b)(6) if necessary.

75. The First Windsor Dec states the facts and the reasons for the belief that this case should be reopened. This declaration was not filed earlier because the Defendants have just received and studied the Canadian Lease and the New York License, and this is good cause for failure to file this earlier. I hereby state that my motions and declarations are made in good faith. James W. Penland has filed a motion to withdraw as Windsor's counsel. Thus Windsor is filing this "Motion to Reopen" pro se. [First Windsor Dec ¶ 75.]

76. Every once in a while, we get a second chance. Every once in a while, we get the opportunity to right a wrong. The Defendants were terribly wronged in this case. Windsor knows that if the Court will reopen the case, the Defendants will be able to show what really happened. Windsor believes the Court will turn to the Defendants and apologize. [First Windsor Dec ¶ 76.]

WHEREFORE, Windsor respectfully requests as follows:

(1) that the Court grant DEFENDANT WILLIAM M. WINDSORS' MOTION TO REOPEN THIS CASE;
(2) that this Court issue an order to vacate all judgments;
(3) that this Court issue an order to have the Plaintiffs repay the money received into the registry of the Court;
(4) that this Court vacate all other orders that may be appropriate;
(5) that this Court reopen this case so justice can be done;
(6) that this Court grant such other and further relief as justice requires in association with this Motion.

Respectfully submitted, this 24 day of April 2009.

/s_____
William Windsor
Pro Se

3924 Lower Roswell Road
Marietta, GA 30068
770-578-1094
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST CORPORATION and MAID OF THE MIST STEAMBOAT COMPANY, LTD.,	)
Plaintiffs,	)
v.	CIVIL ACTION NO: 1:06-CV-071-ODE
ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC. and WILLIAM M. WINDSOR,	)
Defendants.	)

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2009 I served **DEFENDANT WILLIAM M. WINDSOR'S MOTION TO REOPEN CASE** by depositing the same in an envelope with proper postage affixed thereto and sent by certified mail return receipt and addressed as follows:

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This 24 day of April 2009.

/s_____
William Windsor
Pro Se

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST CORPORATION and MAID OF THE MIST STEAMBOAT COMPANY, LTD.,	)
Plaintiffs,	)
v.	CIVIL ACTION NO: 1:06-CV-0714-ODE
ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC. and WILLIAM M. WINDSOR,	)
Defendants.	)

REPLY TO PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT WILLIAM M. WINDSOR'S MOTION TO REOPEN CASE

Comes Now Defendant William M. Windsor ("Windsor") and files this REPLY TO PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT WILLIAM M. WINDSOR'S MOTION TO REOPEN CASE ("Reply"). In support of this Reply, Windsor relies upon Defendant William M. Windsor's Motion to Reopen Case ("Motion to Reopen"), Memorandum of Law in Support thereof (Docket #362), and the First ("Dec #1"), Second ("Dec #2"), Third ("Dec #3"), Fourth ("Dec #4"), Fifth ("Dec #5"), Sixth ("Dec #6"),

and Seventh ("Dec #7") Declarations of William M. Windsor in Support of the Motion to Reopen and declarations and exhibits thereto and in support thereof, the amended exhibits to the Third Declaration of William M. Windsor filed May 13, 2009, as well as on Defendant William M. Windsor's Motion to Recuse ("Motion to Recuse") and declarations and exhibits thereto, Reply to Plaintiffs' Response in Opposition to the Motion to Recuse, and the Customer Declarations (Docket #368).

1. The main purpose of our legal system is to make sure that justice is served. The legal system has been abused by the Plaintiffs and by Judge Orinda D. Evans so that the Defendants were treated unfairly and justice was denied. [Dec #6 ¶4.]

2. Windsor learned early in his 40-year business career that it is often more important to consider what isn't said than to focus on what is said. Windsor waited with great anticipation to see how in the world the Plaintiffs' attorney would respond to the Motion to Reopen. There would be no way for Maid to address the lies, false sworn pleadings, and other wrongs because Windsor had cited and organized the evidence to prove the wrongs. Surely Mr. Carl Hugo Anderson ("Mr. Anderson") couldn't risk having more false affidavits signed. [Dec #6 ¶4.]

3. Review the Plaintiffs' Response in Opposition to Defendant William M. Windsor's Motion to Reopen Case ("Response"). Consider **what hasn't been said**. Mr. Anderson did not even address the fact presentation of Windsor. He filed no

affidavits in support of Plaintiffs' Response. L.R. 7.1 (A) (1) and (b) provide that "if allegations of fact are relied upon, supporting affidavits must be attached." Windsor submits that the Court must therefore grant the Motion to Reopen because the Plaintiffs have provided no facts to support their Response, and the Plaintiffs cannot dispute the facts shown by Windsor. [Dec #6 ¶5.]

4. Windsor filed the Motion to Reopen citing Rule 60(b) of the FRCP and asks the Court to also rule on this Motion to Reopen based upon the Court's inherent powers. ***Bronson v. Schulten***, *104 U.S. (14 Otto) 410, 417 (1881).* [Dec #6 ¶6.]

5. It is well established that a Court may take such action in the interest of justice. It likewise can grant relief from an unjust judgment under FRCP 60(b). "In simple English," Rule 60(b) vests power in courts "adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." ***Klaprott v. United States***, *335 U.S. 601, 615, 69 S.Ct. 384, 390 (1949).* [Dec #6 ¶6.]

6. Mr. Anderson has made statements of alleged facts within the Response that are false and are not supported by affidavit as required. Windsor has addressed the false statements in Exhibit #1 to the Sixth Declaration of William M. Windsor (Dec #6) which is attached hereto as Exhibit A. [Dec #6 ¶7.]

7. The Response is all about procedural issues related to Rule 60(b). A few of the procedural points *might even be valid* based upon some cases

that Windsor has reviewed. The Court's inherent powers trump all procedural points. [Dec #6 ¶7.]

8. The Response ignores the point of the Motion to Reopen. **The point is** that the totality of the lies, false sworn pleadings, Rule 11 and Rule 37 violations, and errors by Judge Evans provide an exceptional circumstance so severe that justice demands that the case be reopened. As the attorney said before the high court in the movie, *The Castle*, "it's the vibe of it." [Dec #6 ¶8.]

9. The proof of the lies/perjury is detailed in Amended Dec#3 – Exhibits #1 to 14. The three Plaintiffs ("Maid") managers are guilty of hundreds of counts of perjury. [Dec #6 ¶9.]

10. The false sworn pleadings and false pleadings are detailed in Amended Dec #3 – Exhibits 1, 3, 5, 7, 13, 22, and 23. The Rule 11 violations are detailed in Amended Dec #3 – Exhibits 23, 1, 3, 5, 7, 13, and 22. The Rule 37 violations are detailed in the Motion to Recuse and Dec #2 and Exhibit 16 thereto. [Dec #6 ¶10.]

11. The errors by Judge Evans are detailed in the Motion to Recuse and Dec #2 and exhibits thereto as well as in the entire Docket. Errors by Judge Evans are summarized in Exhibit #2 to Dec #6. So, "It's the vibe of it." [Dec #6 ¶11.]

12. Windsor asks that the Court consider every point raised in the Motion to Reopen, the Motion to Recuse, and the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Declarations of

William M. Windsor as the basis for granting the Motion to Reopen the Case under Rule 60(b) or the Court's inherent powers. [Dec #6 ¶12.]

13. **WINDSOR'S MOTION IS PROCEDURALLY PROPER UNDER RULE 60(b) OR UNDER COURT'S INHERENT POWERS.** [Dec #6 ¶13.]

14. Windsor's accusations have not previously been given proper consideration by the Court. Exhibit #3 to Dec #6 provides the relevant portions of the transcript from the February 2, 2007 Hearing when Windsor first raised the hundreds of lies and false sworn pleadings. Judge Evans did absolutely nothing about the claim presented at the hearing that the Plaintiffs had lied hundreds of times and had committed perjury. The Defendants asked their attorneys to raise these issues at summary judgment and on appeal, but they failed to do so. [Dec #6 ¶14.]

15. Windsor has asserted valid grounds under Rule 60(b) and under the Court's inherent powers to re-open this litigation and obtain relief. [Dec #6 ¶15.]

16. **THE GROUNDS FOR RELIEF CITED IN WINDSOR'S MOTION DO CONSTITUTE MISTAKE, INADVERTANCE, SURPRISE OR EXCUSABLE NEGLECT UNDER RULE 60(b)(1).** *(Pioneer Inv. Servs. Co. v. Brunswick Assocs,* 507 U.S. 380, 113 S. Ct. 1489 (1993).) [Dec #6 ¶16.]

17. The Supreme Court says "excusable neglect" encompasses negligence and carelessness. In making the determination whether a particular instance of neglect is "excusable," a court must take account of all relevant circumstances. These have been detailed in the Motion to Reopen, and the basic issues are stated in Motion to Reopen ¶ 10 and Dec #1, ¶ 10. [Dec #6 ¶17.]

18. Windsor submits that much of what happened in this case should be considered as a mistake. Judge Evans made many mistakes. The Plaintiffs and their attorneys did many improper things. Defendants' attorney Brian Raley ("Mr. Raley") made many mistakes. (Exhibit 4 to Dec #6.) [Dec #6 ¶18.]

19. The failure to file the Bazzo Deposition was a monumental mistake. This entire case hinges on the oral contract. There was an oral contract for the entire 2005 season, and the Bazzo Deposition provided a second set of evidence in this regard. Exhibit #5 to Dec #6 shows the evidence provided by Carolyn Ballard Bazzo that relates to the oral contract issue alone. [Dec #6 ¶19.]

20. The failure to file the Bazzo Deposition transcript should be considered "excusable neglect" as to Windsor and Alcatraz. Mr. Anderson clearly did request twice that the Deposition transcript be filed. Windsor and Alcatraz asked Mr. Raley to be sure everything needed was filed. Mr. Raley failed to do so. The Defendants did not make the mistake. (Exhibit #6 to Dec #6.) [Dec #6 ¶20.]

21. The Bazzo Deposition should provide sufficient evidence of the oral contract by Sandra Carlson ("Carlson") that Alcatraz could sell Maid tickets for the entire 2005 season. Contrary to Mr. Anderson and the Summary Judgment Order, Alcatraz did provide excerpts or quotations from the deposition. (Docket # 221-3.) The backup evidence of the quotations/citations was simply missing. [Dec #6 ¶21.]

22. The Bazzo Deposition should have changed the outcome of this case if the judge had been fair and had followed the law. (Exhibit #24 to Amended Dec #3.) [Dec #6 ¶22.]

23. The conduct of the Defendants was certainly in good faith. This case should not be reduced to a malpractice claim against Mr. Raley when compared to the lies, perjury, false sworn pleadings, Rule violations, and errors by Judge Evans. The scales of justice weigh heavily in favor of Windsor and Alcatraz. [Dec #6 ¶23.]

24. Windsor's claim that there was an oral promise that gave Alcatraz the right to sell tickets for the *entire* 2005 season was not properly considered throughout the entire litigation. [Dec #6 ¶24.]

25. The Response cites the Affidavit of Sandra Carlson, but that affidavit is not admissible in this case. [Dec #6 ¶25.]

26. The reasoning articulated in the Court's August 8, 2007 order shows that Windsor's claims

would have prevailed as a matter of law with Bazzo's Deposition testimony. The Court claimed there was no proof. While that was clearly erroneous, Bazzo's Deposition provides 117 pages of proof. The filing of the deposition would change the outcome of this case with a fair judge. [Dec #6 ¶26.]

27. The failure to file the deposition is mistake/excusable neglect. [Dec #6 ¶27.]

28. The determination is an equitable one, taking account of all relevant circumstances surrounding the party's omission. (Motion to Reopen ¶ 10 and Windsor Dec #1 ¶ 10.) [Dec #6 ¶28.]

29. The Court is asked to consider the errors of Mr. Raley listed in Exhibit #4 to Dec #6 for more mistakes to consider as "excusable neglect." [Dec #6 ¶29.]

30. Windsor's assertion that the Court withheld relevant documents from the Defendants definitely has merit. Maid's Attorney ignores the reality that the withheld documents contained extremely important information for the Defendants. Judge Evans had an obligation to review those documents and provide them to the Defendants since they were relevant to the case. [Dec #6 ¶30.]

31. That Judge Evans expressed concern that information of a confidential or semi-confidential nature could be used is irrelevant when the documents were vitally important to the case. Judge Evans continued to display her bias against Windsor. The fact that the Court ruled against

Windsor on this discovery request is proof of bias and wrongdoing by Judge Evans. Judge Evans ruled against the Defendants on 40 of 41 contested motions. [Dec #6 ¶31.]

32. **THE GROUNDS FOR RELIEF CITED IN WINDSOR'S MOTION DO CONSTITUTE NEWLY DISCOVERED EVIDENCE.** [Dec #6 ¶32.]

33. Reasonable diligence was used to attempt to obtain the Canadian Lease and the New York License, as is detailed in Dec #6. These documents were absolutely "newly discovered" in March 2009. Discovery takes place when a party sees or hears information, not when a party knows of the existence of evidence that it cannot obtain. [Dec #6 ¶33.]

34. Windsor did "discover" a fax from Sandra Carlson to Windsor dated March 3, 2005. Mr. Anderson improperly cites ***Atkinson v. Prudential Prop. Co., Inc.***, *43 F.3d 367, 371 n.3 (8th Cir. 1994)* and claims the law is clear that a party may not "discover" evidence already in its possession. Windsor did not know he had this fax. Windsor did not even remember that there was such a fax. [Dec #6 ¶34.]

35. The Carlson Fax is clearly material. It supports the Defendants' sworn claims about what happened on March 3, 2005, and it established that Maid's alleged statement of facts was false in this regard. It also proves that Carlson's inadmissible affidavit (Docket #147) was false. [Dec #6 ¶35.]

36. The substantial likelihood that the newly discovered evidence would change the outcome of the case is not always most important. This fax alone does not change the outcome of the case. But it's part of "the vibe of it." It is a key piece of evidence about the central issue to this case. It does not prove the existence of an oral contract for the *entire* 2005 season, but it certainly documents the contact and the follow-up on that critical date, and it must eliminate any weight given to the Plaintiffs' claims on this issue. [Dec #6 ¶36.]

37. "**NEW EVIDENCE # 3 - - Mr. Raley failed to inform the Court of the importance of documents that were in the record.**" [Dec #6 ¶37.]

38. Windsor asks the Court to consider this under any aspect of Rule 60(b), such as excusable neglect, and under the Court's inherent powers. The issue is: There were there no damages under tortious interference since the Plaintiffs had received prepayments of over $10,000. Maid manufactured the allegation of a financial loss by refunding this money over a month after the lawsuit was filed. Windsor asked Mr. Raley to include this at summary judgment, but he did not. [Dec #6 ¶38.]

39. "**NEW EVIDENCE # 4 - - Mr. Raley failed to file declarations of Alcatraz employees. These declarations provide important evidence on various aspects of this case.**" [Dec #6 ¶39.]

40. Mr. Anderson's argument on this seems to be well made. It does seem fair that a party cannot "discover" evidence that existed prior to the

summary judgment filings. Windsor asks the Court to consider this as another mistake and to consider this under all aspects of Rule 60(b) and the Court's inherent powers. Note that these declarations were signed in early 2007 before the summary judgment filings. (Docket #362.) The Defendants asked Mr. Raley to file these declarations, but he failed to do so. [Dec #6 ¶40.]

41. Mr. Raley was replaced as counsel to Alcatraz on all matters shortly after the Final Order was issued in this case. [Dec #6 ¶41.]

42. **"NEW EVIDENCE # 5 - - Mr. Raley failed to file declarations of Alcatraz Media customers."** [Dec #6 ¶42.]

43. Mr. Anderson's argument on this seems to be well made. Windsor asks the Court to consider this as another mistake and to consider this under all aspects of Rule 60(b), including excusable negligence, and the Court's inherent powers. Note that these declarations were signed before summary judgment. (Docket #368.) The Defendants asked Mr. Raley to file these declarations, but he failed. [Dec #6 ¶43.]

44. **THE GROUNDS FOR RELIEF CITED IN WINDSOR'S MOTION DO CONSTITUTE FRAUD UNDER RULE 60(b)(3).** [Dec #6 ¶44.]

45. Mr. Anderson falsely claims "Windsor's fraud accusations against Maid and its counsel were leveled throughout this litigation and the Court found no merit in them." He cites an opposition to

attorney's fees filed September 17, 2007 well after the Summary Judgment Order was issued and at the time of the appeal. This was over two years after the lawsuit was filed and after the Summary Judgment Order. This is not "throughout the litigation." [Dec #6 ¶45.]

46. The Court has not ruled against Windsor on virtually every matter that he complained about in Windsor's Opposition Brief as Maid's Attorney claimed. The Court ignored the lies, perjury, and false sworn pleadings. (Docket #174.) The Court was biased and made improper rulings on many issues. [Dec #6 ¶46.]

47. Mr. Anderson did not deny that Maid or its attorneys engaged in unethical conduct. They did. [Dec #6 ¶47.]

48. Windsor's accusations were never fully briefed until the Motion to Reopen Case and Motion to Recuse Judge Evans. This was another error of Mr. Raley. The Defendants provided much of this detailed information to Mr. Raley for a Rule 11 motion that he promised he would get filed. He failed to do so. [Dec #6 ¶48.]

49. Mr. Anderson falsely claims that Windsor's "accusations are patently false." Maid has no such proof. The Court must not consider this statement as Maid provided no affidavit in support. Maid cannot establish that Windsor's accusations are "patently false," because they are patently true and documented. [Dec #6 ¶49.]

50. **Just as he did in the underlying litigation, Windsor still vehemently asserts that he should not have been a named defendant.** [Dec #6 ¶50.]

51. Mr. Anderson's response on this point is especially interesting. His justification for including Windsor in this case is that "The underlying record in this case is replete with examples of Windsor's outrageous behavior in contacting Maid customers (such as Susan Molck and Fran Marlatt) and threatening to have them criminally prosecuted after they attempted to seek refunds through their credit card companies. (Affidavits of Susan Molck and Fran Marlatt, Docket Nos. 147-22, 147-23, respectively). These are the events, reflected in the record before this Court, that gave rise to Maid's Tortious Interference claim." [Dec #6 ¶51.]

52. Windsor's behavior was not outrageous. Windsor never sold anything, never had any PERSONAL business dealings with Maid or any Alcatraz or Maid customers, and he never did anything that generated any damages to Maid, so there is absolutely no basis to claim he was liable for tortious interference. In fact, Judge Evans did not find against Windsor for tortious interference in her Summary Judgment Order. She found only against Alcatraz. Judge Evans found Windsor jointly liable for attorneys' fees after failing to find against him on the sole cause of action in the case. Since one may not sue another for attorney's fees, Judge Evans was wrong to find Windsor liable. [Dec #6 ¶52.]

53. Alcatraz's dealings with Judy Berry ("Berry"), Susan Molck ("Molck"), and Fran Marlatt ("Marlatt") came only after each had been to Niagara Falls and paid Maid for boat rides. None of the three complained while they were there. There were no damages, and there was no tortious interference with three people who were not honest after they returned from Niagara Falls. Berry is a liar, and the affidavits of Molck and Marlatt do not say what Mr. Anderson claims, and they are proof of nothing. (Exhibits #6, 7, and 8 to Dec #6.) [Dec #6 ¶53.]

54. **Mr. Anderson falsely claims that Windsor has made inappropriate and false accusations against Maid and its attorneys.** [Dec #6 ¶54.]

55. Maid's attorneys have provided neither evidence nor affidavits to dispute Windsor's accusations. The accusations are appropriate and true. [Dec #6 ¶55.]

56. Windsor did not previously raise many of these allegations with the Court in various pleadings throughout this litigation as has been documented above in paragraphs 45 to 48. The Court never properly considered this. [Dec #6 ¶56.]

57. **Windsor did not have a full opportunity to litigate fairly.** [Dec #6 ¶57.]

58. Windsor has clearly shown that the actions of Maid, Maid's Attorneys, and Judge Evans interfered with the full and fair presentation of the case. The "fraud" allegations were not leveled

throughout the underlying proceeding, and Judge Evans wrongly ignored the allegations and did absolutely nothing about it. [Dec #6 ¶58.]

59. **UNDERLYING JUDGMENT IS VOID UNDER RULE 60(b)(4).** [Dec #6 ¶59.]

60. Due process is the principle that the government must respect all of the legal rights that are owed to a person according to the law of the land. The Fifth Amendment to the U.S. Constitution reads: "No person shall be ... deprived of life, liberty, or property, without due process of law. Procedural due process is essentially based on the concept of "fundamental fairness." The person or panel making the final decision over the proceedings is supposed to be impartial in regards to the matter before them. There was no fundamental fairness in this case, and Judge Evans was not the least bit impartial. [Dec #6 ¶60.]

61. The Final Judgment in this case should be void because Judge Evans did not act in a manner consistent with due process of law. Judge Evans withheld documents from the Defendants, denied reasonable discovery to the Defendants, and allowed the legal process to be perverted with dishonesty. [Dec #6 ¶61.]

62. Windsor's Motion to Reopen is not "a rambling recitation of his often-repeated and completely unsubstantiated invective against Maid and its attorneys" as Mr. Anderson claims. Maid and its attorneys engaged in fraudulent and

unethical conduct. It's a fact, and it is well substantiated. [Dec #6 ¶62.]

63. Mr. Anderson stated in the Response: "Maid and its attorneys fully deny each and every allegation made against them here and in past briefs throughout this litigation." The Court must ignore this statement because it is false and because neither Maid nor its attorneys provided affidavits in support of this. Maid did not file affidavits in support of these claims because the claims are true and they apparently were not prepared to lie even more. [Dec #6 ¶63.]

64. WINDSOR'S MOTION IS NOT PROCEDURALLY IMPROPER UNDER RULE 60(b)(5). [Dec #6 ¶64.]

65. This rule says that a party "may be relieved from a final judgment if ... applying it prospectively is no longer equitable...." [Dec #6 ¶65.]

66. Alcatraz did have the right to sell the Plaintiffs' tickets. This was always stated in this case. Windsor did not use the term "first sale doctrine" previously because he had never heard it until a few months ago. Windsor and Alcatraz merely stated that Alcatraz had the right to sell tickets because it is the law in Georgia and it is the practice everywhere in the country. [Dec #6 ¶66.]

67. The injunction is against the law. Georgia Law provides that licensed ticket brokers such as Alcatraz Media and Windsor are licensed

under Georgia law to sell tickets that they lawfully obtain without any permission of any type from the originator of the tickets. [Dec #6 ¶67.]

68. Proper application of this law would have changed the outcome of this case. The injunction is not prospectively equitable, and there was no tortious interference with Maid in 2006, because Alcatraz was merely doing what it is allowed to do as a licensed ticket broker. There were also no damages even asserted in 2006. The First Sale Doctrine should also apply. [Dec #6 ¶68.]

69. **WINDSOR'S MOTION IS NOT PROCEDURALLY IMPROPER UNDER RULE 60(b)(6).** [Dec #6 ¶69.]

70. Please note what is missing in Mr. Anderson's response. He made no argument as to why this would not qualify as an "extraordinary circumstance," and he provided no affidavits to support his false assertions. Mr. Anderson makes false statements in his Response that are proven false. [Dec #6 ¶70 and Exhibit #1.]

71. **WINDSOR'S MOTION IS TIMELY.** [Dec #6 ¶71.]

72. The appeal was filed on September 7, 2007. A ruling on the appeal came over a year later on September 19, 2008. Rule 60(b) is broad. It simply says "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding...." [Dec #6 ¶72.]

73. The "Final Order and Judgment" was December 9, 2008, so this Motion to Reopen is timely under Rule 60. Windsor seeks relief from everything. The Temporary Restraining Order was improper; the Preliminary Injunction Order was improper; and the Summary Judgment Order was improper. Orders regarding discovery were also improper. An 11th Circuit decision seems to provide that a Rule 60(b) motion must be filed within one year after "final judgment." D. C. Docket No. 03-00086-CV-OC-10GRJ, ***JANICE BRADFORD v. UNUM LIFE INSURANCE COMPANY OF AMERICA,*** Appeal from the United States District Court for the Middle District of Florida (May 14, 2007). [Dec #6 ¶73.]

74. Windsor's Motion to Reopen Case has been made within a reasonable time. Windsor asks the Court to consider the sections of Rule 60(b) that do not have a one year limit, and Windsor asks the Court to consider this Motion under the Court's inherent powers. [Dec #6 ¶74.]

75. **THE DECISION ON WHETHER TO SET ASIDE IS DISCRETIONARY.** [Dec #6 ¶75.]

76. Windsor prays that an impartial judge will consider this Motion, use discretion, and grant the Motion. [Dec #6 ¶76.]

77. **RELIEF MAY NOT BE FAVORED FROM CONSENT JUDGMENTS IN SOME CASES, BUT THIS IS NOT ONE OF THEM.** [Dec #6 ¶77.]

78. The Defendants did enter into a Consent Final Order and Judgment. (Docket No. 354). That decision was made **BASED UPON FEAR**. Judge Evans had been so biased and so unfair that the Defendants feared that she would mistreat the Defendants yet again. Settlement was reached in an effort to stop the financial bleeding. This case has always been a travesty of justice. [Dec #6 ¶78.]

79. Case law provides quite clearly that a party has the right to file a Rule 60(b) motion after entering into a consent judgment. [Dec #6 ¶79.]

80. WINDSOR HAS MADE A SHOWING OF MERITORIOUS CLAIM AS PRECONDITION FOR RELIEF FROM JUDGMENT. [Dec #6 ¶80.]

81. Mr. Anderson cites ***Pease v. Pakhoed Corp.***, 980 F.2d 995, 998-1000 (5th Cir. 1993) as his legal justification. In that case, the party merely made a bare assertion in his affidavit that the cause of action was with merit, and that was ruled insufficient. There were no facts presented. Contrast that to Windsor's Motion and declarations where the issues with the contract, tortious interference, perjury, and false pleadings have been detailed with evidence and new declarations to back these statements up. (Dec #4 especially Exhibits #24 and 25.) [Dec #6 ¶81.]

82. Note this quote from Mr. Anderson: "Here, Windsor's First, Third, and Fourth Affidavits in support of his Motion are conclusory opinions not substantiated by facts." Talk about a false pleading.

How could Mr. Anderson make such a patently false statement? It's his vibe – a false vibe. [Dec #6 ¶82.]

83. Windsor has not acted in bad faith, has acted reasonably, has not been stubbornly litigious, and has not caused Plaintiffs unnecessary trouble and expense. Plaintiffs are not entitled to recover costs of litigation. [Dec #6 ¶83.]

84. Plaintiffs have made no attempt to resolve this matter amicably with Windsor and have not been met with abuse and/or harassment on the part of Windsor since Plaintiffs have made no attempt to resolve this. There is no Rule 11 violation by Windsor, but see Exhibit 23 to Amended Dec #3. [Dec #6 ¶84.]

85. Windsor asks that the Court **GRANT** Windsor's Motion to Reopen Case under Rule 60(b) and under the Court's inherent powers. [Dec #6 ¶85.]

86. **WHEREFORE, Windsor** prays that:

(a) the Court **GRANT** Windsor's Motion to Reopen Case;
(b) the Court issue an order to vacate the Final Order and Judgment;
(c) the Court issue an order to vacate all other orders and judgments deemed appropriate;
(d) the Court issue an order to have the Plaintiffs repay the money received into the registry of the Court;

(e) the Court reopen this case so justice can be done; and

(f) the Court grant such other and further relief as justice requires in association with this Motion.

Respectfully submitted, this 22nd day of May 2009.

/s

William M. Windsor
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST CORPORATION and MAID OF THE MIST STEAMBOAT COMPANY, LTD.,	)
Plaintiffs,	)
v.	CIVIL ACTION NO: 1:06-CV-0714-ODE
ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC. and WILLIAM M. WINDSOR,	)
Defendants.	)

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of May 2009, I served **REPLY to PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT WILLIAM M. WINDSORS' MOTION TO REOPEN CASE** by sending by courier and addressed as follows:

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This 22nd day of May 2009.

/s/ _____
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
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MAID OF THE MIST CORPORATION and MAID OF THE MIST STEAMBOAT COMPANY, LTD.,	)
Plaintiffs,	)
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ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC. and WILLIAM M. WINDSOR,	)
Defendants.	)

DEFENDANT WILLIAM M. WINDSOR'S MOTION TO RECUSE JUDGE EVANS

Comes Now Defendant William M. Windsor, and asks that Judge Orinda D. Evans be recused from the above entitled matter under 28 U.S.C. SECTION 144, 28 U.S.C. SECTION 455 of the United State Code, Canons 1, 2, and 3 of the Code of Judicial Conduct, all other relevant statutory and state and federal case law, as well as the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and the Constitution of the State of Georgia. Windsor also requests an evidentiary hearing on the matter before another judge. Windsor shows the Court as follows:

1. Judge Orinda D. Evans ("Judge Evans") has a personal bias in favor of the Plaintiffs and a prejudice against the Defendants. Judge Evans has withheld evidence from the Defendants. Judge Evans has not demonstrated the impartiality required of a judge, and this case needs to be transferred to another judge. Defendant William M. Windsor ("Windsor") files this Motion ("Motion to Recuse") contemporaneously with the filing of a Motion to Reopen the Case ("Motion to Reopen") under Rule 60(b). A copy of the Motion to Reopen and the exhibits thereto are incorporated herein for all purposes.

2. Windsor hereby gives Judge Evans notice that she will be called to testify.

3. In support of this Motion, Windsor relies on two sections of Title 28 of the United States Code (the Judicial Code) that provide standards for judicial disqualification or recusal. Section 455, a federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The same section also provides that a judge is disqualified "where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding."

4. An objective observer, lay observer, and/or disinterested observer must entertain significant doubt of the impartiality of Judge Evans.

"A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned."

"Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality...to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." [Emphasis added]. ***Liteky v. U.S.***, 114 S.Ct. 1147, 1162 (1994)

"...an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality". See ***Parker v. Connors Steel Co.***, 855 F.2d 1510 (11th Cir.) (1988) citing ***Potashnick v. Port City Const. Co.***, 609 F.2d 1101, 1111 (5th Cir.), cert. denied, 449 U.S. 820, 101 S.Ct. 78, 66 L.Ed. 2d 22 (1980).

5. 28 U.S.C. sec. 144, captioned "Bias or prejudice of judge," provides that under circumstances, when a party to a case in a United States District Court files a "timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of an adverse party," the case shall be transferred to another judge.

6. This Motion and the Second Declaration of Defendant William M. Windsor ("Windsor Dec #2"), attached as Exhibit A, will show grounds for recusal of Judge Evans who has behaved

in a manner inconsistent with that which is needed for a full, fair, impartial decision. Questions for an "objective observer" to ask are in Exhibit 1 to Windsor Dec #2.

7. 13 categories of judicial rights violations that Judge Evans committed against the Defendants are detailed herein.

8. A Judicial Misconduct Action filed by Windsor is pending Against Judge Evans with the Judicial Council of the 11th Circuit. Judge Evans will be called as a witness at the hearing on this Motion. [Windsor Dec #2, ¶ 8.]

CATEGORY # 1 – Judge Evans withheld evidence from the Defendants.

9. Judge Evans concealed relevant information from the Defendants when she ruled following an in camera inspection that two contracts included nothing relevant to the case and would not be provided to the Defendants. "The Court had by previous action required these documents to be turned over to the Court for in camera inspection. Production is not warranted." [Docket 209 - Page 9.] [Windsor Dec #2, ¶ 9.] The impartiality of Judge Evans must be questioned.

10. These contracts were the lease between Maid of the Mist Steamboat Company Limited (Maid Canada) and The Niagara Parks Commission ("NPC") (the "Canadian Lease") and the license contract between Maid of the Mist Corporation ("Maid US") and New York State Office of Parks,

Recreation and Historic Preservation ("OPRHP") (the "New York License"). [Exhibits 2 and 3to Windsor Dec #2.] [Windsor Dec #2, ¶ 10.]

11. The Canadian Lease and the New York License contain extremely relevant information as is explained in Windsor Dec #2. [Windsor Dec #2, ¶ 11.]

12. Among other things, these documents reveal the motive for why the Plaintiffs ("Maid") lied and claimed pricing problems and complaints directed at Alcatraz Media ("Alcatraz"). The central issue in this case is the oral contract between the parties. The second most important issue is was there a different explanation for why Maid claimed Alcatraz had caused many customer complaints. Was there another reason why Maid terminated the Alcatraz contract before the 2005 season ended? If Maid lied, why did they lie? [Windsor Dec #2, ¶ 12.]

CATEGORY # 2 – Judge Evans made fact decisions in a jury trial case.

13. A jury was supposed to decide the facts. [Windsor Dec #2, ¶ 13.]

14. On the key issue in the case, Judge Evans ruled just the opposite of what the evidence before the Court clearly showed the facts to be. Judge Evans should not have been deciding the facts, and an outstanding example of the improper actions of Judge Evans and the necessity of her recusal is how she treated the most important issue in the case. [Windsor Dec #2, ¶ 14.]

15. The issue of the oral contract is material, actually central, to the outcome of the case that requires an interpretation of conflicting views on the factual circumstances surrounding the case. [Windsor Dec #2, ¶ 15.]

16. A careful examination of the record indicates that the evidence is overwhelming that there was an oral contract. Exhibit 4 to Windsor Dec #2 is a chart that Windsor prepared to visually display the evidence that was before Judge Evans on this issue. [Windsor Dec #2, ¶ 16.]

17. Maid presented no admissible evidence to indicate there was not an oral contract. [Windsor Dec #2, ¶ 17.]

18. Sandra Carlson ("Carlson") of Maid entered into the oral contract with Alcatraz on March 3, 2005. Carlson did not appear for a deposition, and Judge Evans ruled on February 2, 2007 that her testimony would not be allowed. Docket # 174 -- Page 62, Lines 4-5.] [Windsor Dec #2, ¶ 18.]

19. In the Summary Judgment Order, Judge Evans stated that she did not consider the Affidavit of Sandra Carlson that was submitted as part of the Plaintiffs' summary judgment filing. [Summary Judgment Order, Vol. 17, Docket # 251, p. 44.]

20. In the 30(b)(6) deposition of Timothy P. Ruddy, he stated that Carlson could not remember

any conversations in March 2005. [Docket # 90 and 132 -- Page 206, Lines 15-17.]

21. So, Maid could not dispute that there was an oral contract.

22. Windsor testified in the Answer, in deposition testimony, and in declarations that there was an oral contract for the entire 2005 season. Windsor makes this even clearer in the declaration. [Windsor Dec #2, ¶ 22.]

23. Carolyn Ballard Bazzo testified that there was an oral contract for the 2005 season. [Docket # 269 -- Deposition of Carolyn Ballard Bazzo, P 93: 11-25, P 94: 1-7, P 96: 22-25, P 97: 1-25, P 98: 1-25, P 99: 1-25, P 100: 1-24 and Exhibit B-25.]

24. Yet Judge Evans wrote in the Summary Judgment Order that the only proof was that Alcatraz had an oral contract to buy and resell tickets "in the 2005 season." The Defendants never used the word "in," and Maid had no testimony whatsoever. Judge Evans created these words, and it demonstrates extreme bias. [Docket # 251and 252 -- Page 37.] [Windsor Dec #2, ¶ 24.]

25. This is one of the most significant examples of the lack of impartiality of Judge Evans in this case. This was the issue upon which the entire case centered. If there was an oral contract, the Defendants did nothing wrong. If there wasn't an oral contract, the Defendants were at fault. [Windsor Dec #2, ¶ 25.]

26. When a reasonable person reviews the record in this case, the impartiality of Judge Evans must be doubted. [Windsor Dec #2, ¶ 26.]

27. Windsor has discovered new evidence that establishes that Carlson lied about what happened on March 3, 2005, and it proves that claims made by Maid in this regard were false. [Windsor Dec #2, ¶ 27.]

28. Judge Evans granted a summary judgment when there were other fact issues to be decided as well. [Windsor Dec #2, ¶ 28.]

CATEGORY # 3 – Judge Evans established a fixed view about substantive pending trial matters.

29. Judge Evans made several statements that make it clear that she pre-judged Windsor and the Defendants and decided the case before the Defendants ever presented any evidence. [Windsor Dec #2, ¶ 29.]

30. At the Preliminary Injunction Hearing, Judge Evans indicated she was inclined to grant the Preliminary Injunction though the Defendants prevailed on the causes of action presented for the hearing. [Docket # 37, Page 166, Lines 4 to 8.] [Windsor Dec #2, ¶ 30.]

31. In an Order dated January 19, 2007, Judge Evans said this was a "simple case." [Docket # 141, Page 2.] This statement clearly indicates bias as this was far from a simple case. It shows that she completely disregarded Alcatraz's counterclaim

before she heard any evidence. [Windsor Dec #2, ¶31.]

32. Judge Evans spoke at the Preliminary Injunction with a clearly fixed view about substantive pending trial matters, so this must raise concerns about the "appearance of impropriety," a standard that must be safeguarded under applicable recusal law. [Windsor Dec #2, ¶ 32.]

> *See*, ***In re Murchison***, 349 U.S. 133, 136, 755 S.Ct. 623, 99 L.Ed. 942 (1955); ***Liljeberg v.Health Services. Acquisition Corp.***, 486 U.S. 847, 869-70 (1988); ***Rice v. McKenzie***, 581 F.2d 1114, 1116-17 (4th Cir. 1978); *accord* ***Withrow v. Larkin***, 421 U.S. 35, 47 (1975).
>
> "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law."
>
> The above is applicable to this court by application of Article VI of the United States Constitution and ***Stone v Powell***, 428 US 465, 483 n. 35, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976).

33. The United States Constitution guarantees an unbiased Judge who will always provide litigants with full protection of ALL RIGHTS. Therefore, Windsor respectfully demands that Judge Evans recuse herself in light of the evidence in the attached declaration detailing conduct which gives Windsor good reason to believe that Judge Evans was not fair

and cannot hear this case in a fair and impartial manner.

34. Judge Evans changed her reasoning when the Defendants proved key claims to be false. Judge Evans initially expressed that Alcatraz did not have a source for tickets. That was false; the Defendants produced proof; and Judge Evans changed to claiming that Alcatraz could not sell tickets if Maid didn't want them to. The law and common practice indicate just the opposite to be true. Then in Judge Evans' Order Granting Summary Judgment for the Plaintiffs, she states that there was never any proof offered to show that Alcatraz had obtained tickets. That simply isn't true. And furthermore, the issuance of tickets by Alcatraz was not the subject of any pleadings or motion before the District Court at any time. Maid sought to have the Defendants restrained from selling or attempting to sell Vouchers (defined as a document presented to Maid in lieu of payment) for tickets for Maid's services. [Windsor Dec #2, ¶ 34.]

35. Judge Evans stated in the Order Granting Preliminary Injunction that Windsor called Maid on April 11, 2006 to try to "trick" Maid. This is an outrageous statement for Judge Evans to make. Windsor called to prove a lie of Christopher Glynn ("Glynn"). [Windsor Dec #2, ¶ 35.]

36. Windsor has documentation that will prove many of the lies using the deposition testimony of Maid's managers. [Windsor Dec #2, ¶ 36.]

CATEGORY # 4 – Judge Evans denied discovery needed by the Defendants.

37. Judge Evans denied the Defendants the ability to obtain needed discovery. [Windsor Dec #2, ¶ 37.]

38. The Defendants were denied the most basic discovery -- never even given the names and contact information for employees. [Windsor Dec #2, ¶ 38.]

39. Judge Evans repeatedly denied discovery requests that were essential to the Defendants' defense and in support of the Defendants' case. [Chart showing Discovery Motions and Orders -- Windsor Dec #2, ¶ 39 and Exhibit 5.]

40. Then Judge Evans used the testimony of people who never appeared for depositions after she indicated on February 2, 2007 that she would not allow affidavits or testimony at trial from those people. [Windsor Dec #2, ¶ 40.]

41. The discovery treatment of the Defendants demonstrates a SIGNIFICANT lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 41.]

42. Maid committed terrible discovery abuse over the production of documents. [Windsor Dec #2, ¶ 42.]

43. Despite the Defendants' strong objections, Judge Evans closed discovery at the end

of December 2006. [Windsor Dec #2, ¶ 43.]

44. The short discovery period in this case denied due process for the Defendants. [Windsor Dec #2, ¶ 44.]

45. The short discovery period was especially damaging in this case, because one of the Plaintiffs and many of the needed witnesses were in Canada. The need for Canadian depositions was disclosed to Judge Evans in the Joint Preliminary Report on May 26, 2006. [Docket #38.] If the Defendants had started that day, it was unlikely they could have deposed witnesses in time, and Maid's Attorneys refused to produce the witnesses or even p

46. The Defendants sought the assistance of the Court, but Judge Evans denied all of the Defendants' motions. Judge Evans ignored the time restraints for arranging Canadian depositions. Judge Evans ignored the abuses of Maid in discovery matters. Judge Evans even issued an order that blocked the Defendants from taking preservation of evidence depositions that were absolutely essential to the Defendants' case and would have disproven erroneous information included in the Court's Summary Judgment Order. [Windsor Dec #2, ¶ 46.]

47. Judge Evans denied Windsor the ability to take a 30(b)(6) deposition, a basic right of a party. [Docket # 174, P 59, L 15-21.] [Windsor Dec #2, ¶ 47.]

48. Seven hours for depositions was totally inadequate in this case. It was impossible to cover all of the issues in that time period from the perspective of one Defendant much less all. [Windsor Dec #2, ¶ 48.]

49. On January 19, 2007, after discovery had closed, Judge Evans issued an Order on 9 discovery issues, and all 9 issues went against the Defendants. [Docket # 141.] [Windsor Dec #2, ¶ 49.]

CATEGORY # 5 – Judge Evans refused to allow the Defendants to depose Witnesses.

50. Judge Evans denied the ability of the Defendants to take deposition testimony of any of the Maid employees directly involved with customers. [Windsor Dec #2, ¶ 50.]

51. Judge Evans denied the Defendants the time needed to go through the Hague Convention to take the depositions of Canadian employees of the Maid who were important to the Defendants' case. [Windsor Dec #2, ¶ 51.]

52. The Court ordered the Defendants to refrain from taking preservation of testimony depositions with customers, and then Judge Evans stated in the Summary Judgment Order that there were many customer complaints. [Docket # 251.] There weren't, and the Defendants could have proven that with depositions. The Defendants have affidavits from over 600 customers that disprove such claims and prove the Defendants' claims. [Windsor Dec #2, ¶ 52.]

53. Judge Evans completely compromised the position of the Defendants by denying depositions. [Windsor Dec #2, ¶ 53.]

54. The limit of 10 depositions for all Defendants denied due process for the Defendants. [Windsor Dec #2, ¶ 54.]

CATEGORY # 6 – Judge Evans ignored lies, perjury, false sworn pleadings, false statements of fact, and Rule 11 violations in the hundreds by the Plaintiffs.

55. There were lies, false sworn pleadings, false statements of fact, and Rule 11 violations in the hundreds in this case. The abuse of the legal system and the Defendants in this case is staggering. [Windsor Dec #2, ¶ 55.]

56. This was presented to Judge Evans in a hearing in chambers on February 2, 2007. Judge Evans did nothing. How can a judge hear that one party has lied hundreds of times and do nothing? Windsor told Judge Evans that he had prepared documentation to prove the lies. Judge Evans did nothing. She didn't even respond to Windsor. The lies, false sworn pleadings, false sworn affidavits, false court testimony, and false deposition testimony are detailed in William M. Windsor's Third Declaration in Support of Motion to Reopen Case which is incorporated herein for all purposes. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 56.]

CATEGORY # 7 – Judge Evans favored the Plaintiffs in most rulings.

57. Judge Evans did many things to favor the Plaintiffs in this case. [Windsor Dec #2, ¶ 57.]

58. Judge Evans sided with Maid on just about every issue. Judge Evans perverted the entire legal process through her lack of impartiality. Exhibit 5 to Windsor Dec #2 is a chart that Windsor created to show the various motions filed in the District Court and the effect of the rulings of Judge Evans. This chart shows quite graphically how biased Judge Evans has been. [Windsor Dec #2, ¶ 58.]

59. Maid was late in filing their response to the Defendants' Motion for Summary Judgment. Maid did not have permission to file late, but Judge Evans allowed it. Maid failed to provide citations for a significant number of what they falsely claimed to be undisputed facts, but Judge Evans ignored it. The Defendants made a mistake and failed to file the Bazzo deposition though the testimony was cited in detail in the summary judgment response, yet Judge Evans would not allow it to be late filed. Out of 41 contested motions, Maid won 40. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 59.]

60. Judge Evans included alleged facts in her orders in favor of Maid that were "facts" presented by neither Maid nor the Defendants. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 60.]

61. Maid deceived Judge Evans with complete, total fabrications that there were many customer problems caused by Alcatraz. Exhibit 7 to Windsor Dec #2 is a chart that Windsor created to show the evidence before the District Court on customer problems. [Windsor Dec #2, ¶ 61.]

62. The Defendants were not stubbornly litigious in this case and did not act in Bad Faith as Judge Evans falsely claimed. The Defendants merely defended themselves, and Alcatraz presented counterclaims that it felt were absolutely appropriate. [Windsor Dec #2, ¶ 62.]

63. Judge Evans was unfair in denying Alcatraz's prompt request to amend its pleadings. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 63.]

64. It seemed to Windsor that Judge Evans showed bias to the Plaintiffs in the way she handled document submissions at the Preliminary Injunction Hearing. [Windsor Dec #2, ¶ 64.]

65. On January 24, 2007, Maid filed a Corrected Brief in Support of their Motion for Summary Judgment and Corrected Statement of Material Fact. [Docket # 151.] [Windsor Dec #2, ¶ 65.]

66. The Plaintiffs made all kinds of mistakes in their summary judgment motion, and two days later, they tried to correct it. According to Windsor's reading of the Rules, it was too late.

Judge Evans let Maid get away with it. [Windsor Dec #2, ¶ 66.]

67. On February 15, 2007, Maid filed its answer to Defendants' Joint Motion for Summary Judgment. It was filed late without permission. According to the Rules, the response should not have been allowed, and the Defendants should have been granted summary judgment against Maid's claim of tortious interference. Judge Evans let Maid get away with it. [Windsor Dec #2, ¶ 67.]

CATEGORY # 8 – Judge Evans considered testimony that was not to be considered.

68. Judge Evans considered testimony and proof from Maid that she said in her orders would not be considered. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 68.]

69. Judge Evans considered affidavits for Maid that should not have been considered. This demonstrates a lack of impartiality. [Windsor Dec #2, ¶ 69.]

70. In one instance, Judge Evans issued an order in favor of the Defendants stating that the motion to allow a late-filed affidavit to be considered regarding the Preliminary Injunction was denied. Yet in what proved to be a pattern for Judge Evans, she then QUOTED FROM THE AFFIDAVIT in the Order Granting Preliminary Injunction. [Windsor Dec #2, ¶ 70.]

CATEGORY # 9 – Judge Evans distorted the facts and the law to make the rulings in favor of Maid.

71. The Verified Complaint failed to state any cause of action or allege damages. It was not amended but Judge Evans accepted it. [Windsor Dec #2, ¶ 71.]

72. The Preliminary Injunction was improperly issued for many reasons. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 72.]

73. The Summary Judgment was totally improper but especially as to of Maid of the Mist Corporation, because this entity did not present any damages. Damages are required in a tortious interference claim. [Windsor Dec #2, ¶ 73.]

74. Judge Evans stated that she felt this was a "simple case" because she felt that Maid had the right to refuse to let Alcatraz sell its tickets. Judge Evans held to that misguided notion and ruled against the Defendants with no legal justification. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 74.]

75. The "competition privilege" should have provided a complete defense to Maid's claim of intentional interference with prospective economic advantage, as Alcatraz did not commit an unlawful or illegitimate act. [Windsor Dec #2, ¶ 75.]

76. There was no bad faith by the Defendants, and the Defendants were not stubbornly litigious as Judge Evans so falsely claimed. [Windsor Dec #2, ¶ 76.]

77. The constitutional rights of the Defendants were violated repeatedly in this lawsuit. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 77.]

78. The Summary Judgment Order in this case could improperly establish a major number of precedents that change important laws in Georgia. Alcatraz already has one lawsuit filed against it claiming this case as the precedent. [Windsor Dec #2, ¶ 78.]

79. Judge Evans ruling on attorneys' fees in this case was overturned by the Court of Appeals. It was wrong. Judge Evans denied a hearing and ignored the law as she had done before in this proceeding. [Windsor Dec #2, ¶ 79.]

80. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 80.]

81. Windsor feels that the Plaintiffs and Judge Evans cheated the Defendants at every turn. [Windsor Dec #2, ¶ 81.]

82. The Second Declaration of William M. Windsor states the facts and the reasons for the belief that bias or prejudice exists. This Declaration was not filed earlier because the Defendants have

just received and studied the Canadian Lease and the New York License, and this is good cause for failure to file this earlier. [Windsor Dec #2, ¶ 82.]

83. Judge Evans should disqualify herself because her impartiality may be reasonably questioned. [Windsor Dec #2, ¶ 83.]

CATEGORY # 10 – Judge Evans demonstrated bias and prejudice against Windsor, a pro se party and a male.

84. Judge Evans demonstrated that she did not like that Windsor was pro se, and she discriminated against Windsor. [Windsor Dec #2, ¶ 84.]

85. Judge Evans gave indication that she discriminated against Windsor because he was a male. [Windsor Dec #2, ¶ 85.]

CATEGORY # 11 – Judge Evans improperly considered hearsay as evidence.

86. Judge Evans has allowed significant hearsay. [Windsor Dec #2, ¶86.]

87. Anything relative to customers will be hearsay as none of the Maid deponents had customer dealings (except two customers that Ruddy spoke with). [Windsor Dec #2, ¶ 87.] Judge Evans created facts and issues about the BBB.

CATEGORY # 12 -- Judge Evans failed to provide due process and equal protection to the Defendants

88. Denying the Defendants access to important records is a violation of Equal Protection. [Windsor Dec #2, ¶ 88.]

89. Judge Evans has violated the Defendants' civil and constitutional rights under color of law. [Windsor Dec #2, ¶ 89.]

> "The Due Process Clause serves two purposes...One is to produce, through the use of fair procedures to prevent the wrongful deprivation of interests; ...the other is a guarantee of basic fairness, i.e.: to make people feel that they have been treated fairly."
>
> "[t]rial before an 'unbiased judge' is essential to due process." ***Johnson v. Mississippi***, 403 U.S. 212, 216 (1971); accord ***Concrete Pipe & Prods. V. Constr. Laborers Pension Trust***, 508 U.S. 602, 617 (1993) "due process requires a neutral and detached judge in the first instance." (citation omitted)
>
> "justice must give the appearance of justice" ***Levine v. United States***, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing ***Offutt v. United States***, 348 U.S. 11, 14, 75 S. Ct. 11, 13 (1954).
>
> See ***Mathews v. Eldridge***, 424 U.S. 319, 344 (1976)..., by ensuring that no person will be deprived of his interests in the absence of a

proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him."

"even if there is now showing of actual bias", "due process is denied by circumstances that create the likelihood or the appearance if bias" *Peters v. Kiff*, 407, U.S. 493, 502 (1972)

90. Windsor has just cause to believe that the Defendants have not been given a fair trial and cannot have a fair trial due to the issues alleged. [Windsor Dec #2, ¶ 90.]

CATEGORY # 13 – Judge Evans will be a witness in this matter, and a Judicial Misconduct Complaint is pending against her regarding this case.

91. Judge Evans should recuse herself because Windsor has filed a Judicial Misconduct Complaint against her with the Judicial Council of the 11th Circuit. [Windsor Dec #2, ¶ 91.]

92. This is not a case where one person has told one lie, but a case where a group of people have gotten together to perpetrate a massive fraud on the Defendants and this Court. [Windsor Dec #2, ¶ 92.]

93. Windsor submits that Maid's Attorneys have committed a number of violations of the Federal Rules of Civil Procedure as well as violations of the Georgia Rules of Professional Conduct. [Windsor Dec #2, ¶ 93.]

94. The standard of review in asking a

judge to recuse is defined by Canon 3(C) which states:

> "A judge should recuse in a proceeding in which the judges impartiality might reasonably be questioned..." This includes when a judge has "displayed deep-seated and unequivocal antagonism that would render fair judgment impossible." The test under the canon is whether a reasonable person would have a factual basis to doubt the judge's impartiality.
>
> It is vital to public confidence in the legal system that decisions of the court are not only fair, but also appear fair. The standard of review should be liberal construction in favor of the right to disqualify.
>
> Thus, whether the disqualification of a judge hinges on a statute or on a rule, the Court should adhere to the liberal construction of that statute or rule in favor of the right to disqualify. A liberal construction is necessary if we wish to promote and maintain public confidence in the judicial system.

95. In addition, the Code of Judicial Conduct provides that:

> "...judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances" specified in the rule. Thus, the canon is broader than the statute.

First, the four subparagraphs of Rule 2, Canon 3C(1), which set forth the circumstances for disqualification, are a clear directive to disqualify. ***Berry***, 654 S.W.2d at 163 (Dixon, J., concurring). When one of these causes to recuse appears, a judge must do so. Id. Moreover, the phrase, "including but not limited," signifies that a judge's duty to disqualify is not confined to the factors listed in the subparagraphs, but is much broader. Second, Rule 2, Canon 3C(1) commands the disqualification of a judge if "his impartiality might reasonably be questioned." See ***Grant v. State***, 700 S.W.2d 170, 171 (Mo. App. 1985). Thus, under the canon, the test is not whether actual bias and prejudice exist, but whether a reasonable person would have factual grounds to doubt the impartiality of the court. ***Berry***, 654 S.W.2d at 164 (Dixon, J., concurring). If, on the record, a reasonable person would find an appearance of impropriety, the canon compels recusal. Id.

The question is not whether the judge is impartial in fact. It is simply whether another, not knowing whether or not the judge is actually impartial, might reasonably question his impartiality on the basis of all the circumstances.

When a party seeks to disqualify a judge for cause, the judge should adhere to the following procedures. First, the challenged judge should determine if the motion is

> procedurally adequate. Next, the judge should determine whether the petition is substantively adequate: Does the petition allege facts which warrant disqualification for cause pursuant to the statutes? If the motion is procedurally and substantively sufficient, the judge is faced with two options: either to grant the motion; or, if the facts in the motion are to be controverted, to hold a hearing on the record, whether requested or not, to determine the disqualification issue. If the challenged judge is to testify, the hearing must be held before another judge. These minimal procedures are necessary because, in the face of a proper application for a change of judge because the judge lacks jurisdiction to proceed in the action in which his impartiality is questioned.

96. The due process clauses of both the Georgia and the United States Constitutions guarantee a party an impartial and disinterested tribunal in civil cases. ***Marshall v. Jerrico, Inc.***, 446 U.S. 238, 242, 100 S.Ct. 1610, 1613 (1980).

97. Windsor contends that the average reasonable person, knowing all the facts, would easily conclude that Judge Evans' impartiality could be questioned. Windsor contends that any reasonable person would conclude that Judge Evans cannot possibly give the Defendants a fair and impartial hearing and that she should be removed and replaced by an impartial judge. [Windsor Dec #2, ¶ 97.]

("The probability of actual bias on the part of the judge . . . is too high to be constitutionally tolerable"); ***Berger v. United States***, 255 U.S. 22, 33-34 (1921); ***Potashnick v. Port City Constr. Co.***, 609 F.2d 1101, 1111 (5th Cir. 1980) ("Any question of a judge's impartiality threatens the purity of the judicial process and its institutions"); ***King v. State***, 246 Ga. 386, 389-90, 271 S.E.2d 630 (1980); ***Hall v. Small Bus. Admin.***, 695 F.2d 175, 179 (5th Cir. 1983) (disqualification of a judge required "if a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality"); ***United States v. Columbia Broad. Sys., Inc.***, 497 F.2d 107, 109 (5th Cir. 1974) ("The protection of the integrity and dignity of the judicial process from any hint or appearance of bias is the palladium of our judicial system"); ***Stephens v. Stephens***, 249 Ga. 700, 702, 292 S.E.2d 689, 691 (1982). ("All parties before the court have the right to an impartial judicial officer."); ***Isaacs v. State***, 257 Ga. 126, 127, 355 S.E.2d 644 (1987) ("The fact that a judge's impartiality might reasonably be questioned is sufficient for disqualification."; a judge may not be so personally involved in a controversy "that his objectivity could reasonably be questioned.").

98. Judge Evans has demonstrated prejudice against the Defendants and must be removed from this case. Judge Evans' orders must be ruled void and a new trial ordered, otherwise the Court will deprive the Defendants of a fair trial in

violation of the due process clauses of both the Georgia and the United States Constitutions and in violation of Federal Rules of Civil Procedure and the Federal Rules of Judicial Procedure. [Windsor Dec #2, ¶ 98.]

WHEREFORE, having now filed this Motion and sworn declarations, Defendant Windsor respectfully requests as follows:

(1) that the presiding judge of this administrative judicial district assign another judge to this case or refer this Motion to the presiding judge of this administrative district for a hearing;
(2) that the Court grant DEFENDANT WILLIAM M. WINDSOR'S MOTION TO RECUSE JUDGE EVANS;
(3) that the orders of Judge Evans be declared void;
(4) that the Court issue an order recusing Judge Evans;
(5) that the Court issue an order requiring a new judge to hear Defendant Windsor's Motion to Reopen the Case;
(6) that the Court grant such other and further relief as justice requires in association with this Motion.

Respectfully submitted, this 24 day of April 2009.

/s _____

William M. Windsor
Pro Se

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770-578-1094
Facsimile: 770-578-1057

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST CORPORATION and MAID OF THE MIST STEAMBOAT COMPANY, LTD.,	)
Plaintiffs,	)
v.	CIVIL ACTION NO: 1:06-CV-071-ODE
ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC. and WILLIAM M. WINDSOR,	)
Defendants.	)

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2009 I served **DEFENDANT WILLIAM M. WINDSOR'S MOTION TO RECUSE JUDGE EVANS** by certified mail return receipt to the following attorneys of record:

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This 24 day of April, 2009.

/s_____

William M. Windsor
Pro Se

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST CORPORATION and MAID OF THE MIST STEAMBOAT COMPANY, LTD.,	)
Plaintiffs,	)
v.	CIVIL ACTION NO: 1:06-CV-0714-ODE
ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC. and WILLIAM M. WINDSOR,	)
Defendants.	)

REPLY TO PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT WILLIAM M. WINDSOR'S MOTION TO RECUSE JUDGE EVANS

Comes Now Defendant William M. Windsor ("Windsor") and files this REPLY TO PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT WILLIAM M. WINDSOR'S TO MOTION TO RECUSE JUDGE EVANS ("Reply"). In support of this Reply, Windsor relies upon Defendant William M. Windsor's Motion to Recuse ("Motion to Recuse"), the Seventh Declaration of William M. Windsor attached hereto ("Dec #7"), the First ("Dec #1"),

Second ("Dec #2"), Third ("Dec #3"), Fourth ("Dec #4"), Fifth ("Dec #5"), and Sixth ("Dec #6") Declarations of William M. Windsor in Support of the Motion to Reopen or the Motion to Recuse and declarations and exhibits thereto and in support thereof, the amended exhibits to the Third Declaration of William M. Windsor filed May 13, 2009, as well as on Defendant William M. Windsor's Motion to Reopen ("Motion to Reopen"), Memorandum of Law in Support thereof (Docket #362), and declarations and exhibits thereto, and the Customer Declarations (Docket #368).

1. Windsor asks the Court to delay a decision on this Motion until Windsor has the opportunity to depose Judge Orinda D. Evans. The Clerk of the Court provided a signed subpoena to enable Windsor to depose Judge Evans. It is unfair to ask Windsor to prove the lack of impartiality of Judge Evans without being afforded the opportunity to ask her questions under oath. Windsor is confident that he will be able to show bias from deposition testimony. [Dec #7 ¶4.]

2. A Judicial Misconduct Complaint filed by Windsor is pending against Judge Evans. (Dec #7 - Exhibit #1.) This will surely cause bias. [Dec #7 ¶4.]

3. Windsor has also requested a hearing on this Motion, and Windsor hereby repeats that request. This is a matter that should be addressed in open court. Judge Evans will be called as a witness. [Dec #7 ¶4.]

4. Windsor reluctantly submits that it is possible that Judge Evans and/or a clerk for Judge Evans may have been improperly influenced in this case. Due process of law requires that Windsor be given an opportunity to make the necessary inquiries. [Dec #7 ¶5.]

5. The standard of review in asking a judge to recuse is defined by the Code of Judicial Conduct. [Dec #7 ¶6.]

6. The Motion to Recuse is procedurally adequate. The Motion alleges facts which warrant disqualification for cause pursuant to the statutes. This is a proper application for a change of judge, and Judge Evans no longer has jurisdiction to proceed in the action in which her impartiality is questioned. [Dec #7 ¶7.]

7. Failure to follow proper procedure may result in a violation of Windsor's civil rights where the Court will be acting in the absence of all jurisdiction. [Dec #7 ¶7.]

8. The Supreme Court has expressed that Judge Evans may proceed no further in this case. ***BERGER V. UNITED STATES***, 255 U. S. 22 (1921). Judge Evans is not the proper person to decide if Windsor has asserted valid factual and legal grounds to recuse Judge Evans. This would be like letting the fox guard the hen house. There could be nothing fair about criticizing at length the actions and bias of the Judge, and then letting the biased judge rule on whether those criticisms were valid. [Dec #7 ¶8.]

9. Windsor has asserted valid factual and legal grounds to recuse Judge Evans from this case.

WINDSOR'S MOTION SUCCEEDS UNDER 28 U.S.C. § 455. [Dec #7 ¶9.]

10. Review the Plaintiffs' Response. Consider **what hasn't been said**. Plaintiffs did not even address the fact presentation of Windsor. They filed no affidavits in support of Plaintiffs' Response. L.R. 7.1 (A) (1) and (b) provide that "if allegations of fact are relied upon, supporting affidavits must be attached." Windsor submits that the Court must therefore grant the Motion to Recuse because the Plaintiffs have provided no facts to support their Response, and the Plaintiffs cannot dispute the facts shown by Windsor. Since the facts presented by Windsor are uncontroverted, the Court must grant the Motion to Recuse. [Dec #7 ¶10.]

11. **WINDSOR'S ASSERTION THAT THE COURT WITHHELD EVIDENCE HAS MERIT.** The documents were withheld by Judge Evans, and this fact is proven with a Court Order (Docket No. 209). [Dec #7 ¶11.]

12. The Court finally reviewed these documents in camera and then claimed they were irrelevant. This was false. Either the Plaintiffs did not show the correct contracts to Judge Evans, or Judge Evans improperly concealed these extremely relevant documents from the Defendants. This demonstrates the bias of Judge Evans. It also shows that Judge Evans had personal knowledge of facts that she withheld from the Defendants. If a

reasonable person examines the contracts with an understanding of some of the basic issues in this case – pricing, trademarks, and dishonesty, that reasonable person would have to conclude that withholding these documents was wrong and demonstrated a lack of impartiality. The facts presented by Windsor on this have not been controverted. [Dec #7 ¶12.]

13. The actions of Judge Evans in this case demonstrate a deep-seated favoritism for the Plaintiffs and antagonism toward Windsor and Alcatraz that make fair judgment impossible. Windsor cited facts supporting this contention. Additional facts are cited in Dec #7 attached hereto as Exhibit A. [Dec #7 ¶13.]

14. **THE CONTENTIONS THAT JUDGE EVANS "MADE FACT DECISIONS IN A JURY TRIAL CASE" AND "ESTABLISHED A FIXED VIEW ABOUT SUBSTANTIVE PENDING TRIAL MATTERS" HAVE MERIT.** [Dec #7 ¶14.]

15. There is extensive factual evidence to support Windsor's contention that the Court's August 8, 2007 Order (Docket #251) demonstrates the Court's improper application of facts to law. The ruling on the central contract issue demonstrates Judge Evans' "extreme bias." (See Third Declaration of William M. Windsor attached to Motion to Reopen and Amended Exhibits #22 and 24 filed May 13, 2009.) [Dec #7 ¶15.]

16. The Summary Judgment granted in this case was wrong. Judge Evans invented facts

and twisted and ignored the law to make the ruling that she did. 210 of the 410 sentences in the Summary Judgment Order (Docket #251) were false. It shows bias. [Dec #7 ¶16.]

17. Judge Evans made improper fact decisions in this case. The facts presented by Windsor on this have not been controverted. [Dec #7 ¶17.]

18. Judge Evans established a fixed view about substantive trial matters. The facts presented by Windsor on this have not been controverted. [Dec #7 ¶18.]

19. The award of attorney's fees and expenses to the Plaintiffs in this case definitely demonstrates the bias of Judge Evans for Maid and antagonism toward Windsor. The facts presented by Windsor on this have not been controverted. [Dec #7 ¶19.]

20. The Defendants appealed the Summary Judgment Order to the United States Court of Appeals for the Eleventh Circuit. The Court of Appeals had to accept that the facts presented by Judge Evans were correct. The facts were not. 210 of the 410 sentences in the Summary Judgment Order were false. The facts presented by Windsor on this have not been controverted. [Dec #7 ¶20.]

21. **THE CONTENTIONS THAT JUDGE EVANS DENIED CERTAIN NEEDED DISCOVERY AND REFUSED TO ALLOW DEFENDANTS TO**

DEPOSE WITNESSES ARE WITH MERIT. [Dec #7 ¶21.]

22. Windsor was denied the opportunity to take deposition testimony of any of the Maid employees. Mr. Anderson claims Maid and its attorneys have repeatedly addressed Windsor's arguments in their response briefs (Docket #194 and 245). Mr. Anderson always addressed everything, but he abused the legal system in much that he did. The fact that Judge Evans ignored the pleas of the Defendants in discovery matters establishes her bias. [Dec #7 ¶22.]

23. As is often the case, Maid's Attorney distorts reality. Mr. Anderson's lame offers to produce some witnesses for depositions had strings attached that would deny the Defendants the opportunity to depose other witnesses. Mr. Anderson made it impossible for the Defendants to depose witnesses, and Judge Evans aided him in his improper efforts. Mr. Anderson presented no affidavits, so there are no facts for the Plaintiffs. The facts presented by Windsor have not been controverted. This is detailed in Dec #7. [Dec #7 ¶23.]

24. Maid attempted to provide some of the employees for depositions after discovery had closed and after summary judgment motions had been filed. This "generous offer" came after Judge Evans ruled on February 2, 2007 (Docket #174) that Maid would not be allowed to use the testimony of these witnesses at trial or through affidavits. The Court later claimed that, "Because the Court finds that

these declarations were not necessary for deciding the parties' motions for summary judgment, the Court DISMISSES AS MOOT Alcatraz's Motion to Strike." (Docket No. 251, p. 44). The truth of the matter is that there is no way that Judge Evans made the statements in the Summary Judgment Order that she made without improperly using these inadmissible affidavits. Judge Evans often said one thing and did another, and it always favored the Plaintiffs. [Dec #7 ¶24.]

25. Windsor alleged in his Motion to Recuse that he was denied the opportunity to depose customer witnesses. This is a fact. Windsor made the same allegation in Defendants' Joint Emergency Motion for Clarification (Docket No. 179). Judge Evans issued an April 20, 2007 Order denying depositions. (Docket #209). [Dec #7 ¶25.]

26. What Judge Evans failed to state in this order is that the attempts to take these depositions had been made in 2006, and Judge Evans did not promptly rule on the motions in that regard. Maid's Attorney took the position that the Defendants were not allowed to take these preservation of testimony depositions, so after scheduling these, the Defendants were forced to go to the Court for relief. No relief was given as was the practice of Judge Evans on every matter related to the Defendants. Windsor addresses the various discovery issues in Dec #7 and Exhibit #16 to Dec #2. [Dec #7 ¶26.]

27. The various discovery rulings demonstrate bias for the Plaintiffs and antagonism

against the Defendants. Judge Evans denied discovery for the Defendants because she had decided in favor of the Plaintiffs before the Preliminary Injunction Hearing, so it was a waste of her time to consider anything new. As a matter of law, Judge Evans must be recused. The facts presented by Windsor on this have not been controverted. [Dec #7 ¶27.]

28. **THE CONTENTION THAT JUDGE EVANS IGNORED LIES, PERJURY, FALSE SWORN PLEADINGS, FALSE STATMEMENTS OF FACT, AND RULE 11 VIOLATIONS IS WITH MERIT AND IS OUTSTANDING PROOF OF BIAS FOR THE PLAINTIFFS AND ANTAGONISM TOWARD THE DEFENDANTS.** [Dec #7 ¶28.]

29. Mr. Anderson falsely claims "Windsor's fraud accusations against Maid and its counsel were leveled throughout this litigation and the Court found no merit in them." These claims are not supported by affidavits, so these are not facts for the Plaintiffs. The facts presented by Windsor have not been controverted. [Dec #7 ¶29.]

30. The Court did not rule against Windsor on virtually every matter that he complained about in Windsor's Opposition Brief. The Court ignored the lies, perjury, and false sworn pleadings. (Docket #174.) The Court was biased and made improper rulings on many issues. [Dec #6 ¶46.] [Dec #7 ¶30.]

31. Windsor's accusations were never fully briefed until the Motion to Reopen Case and Motion to Recuse Judge Evans. This was another error of

Mr. Raley. The Defendants provided much of this information to Mr. Raley for a Rule 11 motion that he promised he would get filed. He failed to do so. [Dec #7 ¶31.]

32. In the Response of Plaintiffs in Opposition to Defendant William M. Windsor's Motion to Reopen Case, Mr. Anderson falsely claimed that Windsor's "accusations are patently false." Maid has no such proof. The Court must not consider this statement as Maid provided no affidavit in support. Maid cannot establish that Windsor's accusations are "patently false," because they are patently true and documented. The facts presented by Windsor on this have not been controverted. [Dec #6 ¶49.] [Dec #7 ¶32.]

33. Windsor clearly disagrees with the outcome of many of the Court's rulings in this case. There is clear and convincing evidence of fraudulent and unethical conduct. The facts presented by Windsor on this have not been controverted. [Dec #7 ¶33.]

34. Neither Maid nor Maid's Attorneys have filed any affidavits in support of the statements made in this Response. There is no proof of their assertions. [Dec #7 ¶34.]

35. **ALL OTHER ALLEGATIONS OF BIAS HAVE MERIT.** Windsor has demonstrated the bias and lack of impartiality of Judge Evans with many details and citations of facts. The facts presented by Windsor on this have not been controverted. [Dec #7 ¶35.]

36. Windsor has articulated facts and legally cognizable grounds to disqualify Judge Evans. A judge's refusal to recuse him or herself is reviewed under an abuse of discretion standard. *See* ***United States v. Greenough***, 782 F.2d 1556, 1558 (11th Cir. 1986). The standard "is an objective one, whether a reasonable person knowing all the facts would conclude that the judge's impartiality might reasonably be questioned." *Id.* [Dec #7 ¶36.]

37. Windsor has shown other grounds to disqualify Judge Evans in addition to disagreement with adverse rulings. [Dec #7 ¶37.]

38. Georgia courts have defined "impartiality might reasonably be questioned" as a "reasonable perception, of a lack of impartiality by the judge, held by a fair minded and impartial person based upon objective fact or reasonable inference." ***King v. State***, 246 Ga. 386 (1980). [Dec #7 ¶38.]

39. The bias of Judge Evans must be the result of an opinion on the merits on some basis other than what the judge learned from her participation in this case. Judge Evans ignored the facts in this case. [Dec #7 ¶39.]

40. There is a lot of case law on recusal of judges. [Dec #7 ¶40.]

41. Dec #7 states under oath and based upon personal knowledge the facts and reasons why Windsor submits that Judge Evans was biased and

demonstrates the attitude of Judge Evans' mind. [Dec #7 ¶41.]

42. In this case, the totality of what has happened in this case must be considered to "appreciate" the bias of Judge Evans. Most of it is demonstrated by rulings because there was limited interaction with the Judge on any other basis. In the Motion to Recuse, Windsor detailed 13 categories of judicial rights violations that Judge Evans committed against the Defendants:

a. Judge Evans ignored lies, perjury, false sworn pleadings, false statements of fact, and Rule 11 violations in the hundreds by the Plaintiffs.
b. Judge Evans withheld evidence from the Defendants. Judge Evans made fact decisions in a jury trial case.
c. Judge Evans demonstrated bias and prejudice against Windsor, a pro se party and a male.
d. Judge Evans established a fixed view about substantive pending trial matters.
e. Judge Evans denied discovery needed by the Defendants.
f. Judge Evans refused to allow the Defendants to depose Witnesses.
g. Judge Evans favored the Plaintiffs in most rulings.
h. Judge Evans considered testimony that was not to be considered.
i. Judge Evans distorted the facts and the law to make the rulings in favor of Maid.

j. Judge Evans improperly considered hearsay as evidence.
k. Judge Evans failed to provide due process and equal protection to the Defendants.
l. Judge Evans will be a witness in this matter, and a Judicial Misconduct Complaint is pending against her regarding this case.

Maid's Attorney conveniently ignored a number of these categories as they cannot be denied. [Dec #7 ¶42.]

43. Windsor prepared a list of questions for an impartial observer to ask in evaluating whether Judge Evans lacked impartiality. (Exhibit #1 to Dec #2.) If these questions are answered properly, all will be answered Yes and will prove a lack of impartiality. [Dec #7 ¶43.]

44. Windsor also asserts that Judge Evans should be disqualified under 28 U.S.C. § 144 which provides, in relevant part:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a *personal bias or prejudice against him or in favor of any adverse party*, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. The affidavit shall...be filed not less than ten days before the beginning of the term at which the

> proceeding is to be heard, or good cause be shown for failure to file it within such time.... 28 U.S.C. § 144 (emphasis supplied). [Dec #7 ¶44.]

45. Windsor has presented evidence that Judge Evans harbored a "personal bias or prejudice against him and in favor of the adverse party." The facts presented by Windsor on this have not been controverted. [Dec #7 ¶45.]

46. Windsor had good cause for why he waited to file his Motion to Recuse until after the Court's final judgment. [Dec #7 ¶46.]

47. Plaintiffs are not entitled to recover attorney's fees and costs of litigation. [Dec #7 ¶47.]

48. Plaintiffs never attempted to resolve this matter amicably with Windsor and have not been met with abuse and/or harassment on the part of Windsor. Plaintiffs and Plaintiffs' Attorneys have not spoken with Windsor since 2007. The facts presented by Windsor on this have not been controverted. [Dec #7 ¶48.]

49. Windsor has not violated Rule 11, but Maid's Attorneys have done so repeatedly. [Dec #7 ¶49.]

50. Windsor asks that the Court **GRANT** Windsor's Motion to Recuse Judge Evans because it articulates legally and factually cognizable grounds for recusal. Just like Windsor's Motion to Reopen Case, this Motion is valid. [Dec #7 ¶50.]

WHEREFORE, having now filed this Motion and sworn declarations, Defendant Windsor respectfully requests as follows:

1. that the presiding judge of this administrative judicial district assign another judge to this case or refer this Motion to the presiding judge of this administrative district for a hearing;
2. that the Court grant DEFENDANT WILLIAM M. WINDSOR'S MOTION TO RECUSE JUDGE EVANS;
3. that the orders of Judge Evans be declared void;
4. that the Court issue an order recusing Judge Evans;
5. that the Court issue an order requiring a new judge to hear Defendant Windsor's Motion to Reopen the Case;
6. that the Court grant such other and further relief as justice requires in association with this Motion.

Respectfully submitted, this 20th day of May 2009.

_____

William M. Windsor
Pro Se
3924 Lower Roswell Road
Marietta, GA 30068
770-578-1094
Facsimile: 770-578-1057

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST CORPORATION and MAID OF THE MIST STEAMBOAT COMPANY, LTD.,	)
Plaintiffs,	)
v.	CIVIL ACTION NO: 1:06-CV-0714-ODE
ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC. and WILLIAM M. WINDSOR,	)
Defendants.	)

CERTIFICATE OF DEFENDANT

Defendant William M. Windsor hereby certifies that he has prepared the within and foregoing document in accordance with LR 5.1, NDGa., and LR 7.1D, NDGa. Specifically, Defendant certifies that he has used 14 point Times New Roman as the font in these documents.

Respectfully submitted, this 20th day of May 2009.

/s/_____

William M. Windsor
Pro Se

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST CORPORATION and MAID OF THE MIST STEAMBOAT COMPANY, LTD.,	)
Plaintiffs,	)
	CIVIL ACTION NO:
v.	
	1:06-CV-0714-ODE
ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC. and WILLIAM M. WINDSOR,	)
Defendants.	)

CERTIFICATE OF SERVICE

I hereby certify that on 20th day of May 2009, I served **REPLY to PLAITNIFFS' RESPONSE IN OPPOSITION TO DEFENDANT WILLIAM M. WINDSORS' MOTION TO RECUSE JUDGE EVANS** by depositing the same in the United States Mail with sufficient postage paid and addressed as follows:

Carl Hugo Anderson, Jr., Esq.
Sarah Bright, Esq.
Brett Mendell, Esq.
HAWKINS & PARNELL, LLP
4000 SunTrust Plaza

303 Peachtree Street, N.E.
Atlanta, Georgia 30308

Marc W. Brown
Phillips Lytle, LLP
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G. Brian Raley, Esq.
RALEY & SANDIFER, P.C.
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This 20th day of May 2009.

/s_____

William M. Windsor
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APPEAL DOC.NO. 09-13086-DD

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MAID OF THE MIST CORPORATION and
MAID OF THE MIST STEAMBOAT COMPANY,
LTD., Appellees,

v.

ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA,
INC., Defendants; and WILLIAM M. WINDSOR,
Appellant and Defendant.

Appeal from the United States District Court
for the Northern District of Georgia, Atlanta
Division
Case No. 1:06-CV-00714-ODE-1
The Honorable Orinda D. Evans

BRIEF OF DEFENDANT/APPELLANT

WILLIAM M. WINDSOR

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PRO SE FOR DEFENDANT/APPELLANT,
WILLIAM M. WINDSOR

CERTIFICATE OF INTERESTED PERSONS

William M. Windsor, Pro Se, hereby certifies pursuant to FRAP 26.1 and 11th Cir. Rule 26.1-1 that the following persons, judges, associations of person, firms, partnerships, or corporations may have an interest in the outcome of this case:

- Alcatraz Media, Inc., and Alcatraz Media, LLC, Defendants (jointly "Alcatraz")
- Carl H. Anderson, Jr. ("Mr. Anderson"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- Judith L. Berry ("Berry"), customer of Alcatraz and Maid.
- Sarah Louise Bright ("Ms. Bright"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- Marc W. Brown ("Mr. Brown"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- Sandra Carlson ("Carlson"), Assistant Controller of Maid.
- Senator Saxby Chambliss.
- Judge Dubina, United States Appellate Judge.
- Hon. William S. Duffey ("Judge Duffey"), United States District Judge.

- Hon. Orinda D. Evans ("Judge Evans" or the "DC"), United States District Judge.
- Everybody Loves Travel, LLC, company owned by the owners of Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
- Judge Fay, United States Appellate Judge.
- Federal Bureau of Investigation ("FBI").
- Georgia Athletic and Entertainment Commission ("GAEC").
- Christopher Glynn ("Glynn"), President of Maid.
- Hawkins & Parnell ("H&P"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- Judge Hull, United States Appellate Judge.
- Judicial Council of the Eleventh Circuit.
- Maid of the Mist Corporation ("Corporation"), Appellee, and Maid of the Mist Steamboat Company, Ltd. ("Steamboat"), Appellee, (jointly "Maid").
- Brett A. Mendell ("Mr. Mendell"), Former Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- National Association of Ticket Brokers.
- New York State Bar Association.

- New York State Office of Parks, Recreation and Historic Preservation
- New York State Comptroller's Office
- Niagara County New York District Attorney.
- Niagara Parks Commission
- James W. Penland ("Mr. Penland"), Former Counsel for William M. Windsor, Appellant.
- Phillips Lytle ("Phillips"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- G. Brian Raley ("Mr. Raley"), Former Counsel for Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
- Reserve 123, Inc., a company owned by the owners of Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
- Reserve XL, Inc., a company owned by the owners of Defendants, Alcatraz Media, Inc., and Alcatraz Media LLC.
- Round America, LLC, a company owned by William M. Windsor.
- Timothy P. Ruddy ("Ruddy"), Vice-President of Maid.
- Arthur Russ ("Mr. Russ"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- Robert J. Schul ("Schul"), Controller of Maid.
- State Bar of Georgia.

- Kathleen E. Sullivan ("Ms. Sullivan"), Former Counsel for Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
- Take 5 Tours, Inc., a company owned by the owners of Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
- United States Attorney General.
- United States Attorney's Office.
- United States Supreme Court.
- William M. Windsor ("Windsor or Appellant"), Defendant and Appellant. (Defendants Alcatraz and Windsor are reflected herein as "A&W.")
- ZZ Tours, Inc., a company owned by William M. Windsor.

No corporate disclosure statement is necessary for this party because Windsor is a natural, human, person.

Respectfully submitted this 17th day of August, 2009.

William M. Windsor, Pro Se:

/s_____
William M. Windsor
Pro Se

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STATEMENT REGARDING ORAL ARGUMENT

Appellant Windsor requests oral argument. This case is heavily fact dependent in a record that contains thousands of false statements. This Appellant believes that oral argument will aid the court by providing a more in-depth explanation of the facts and will give the court the opportunity to question the Appellant about facts and issues to aid the court in making a more informed decision.

The Appellant is pro se, and the Appellant believes the oral argument will assist the court in any areas where the Appellant was at a disadvantage as a pro se party in the preparation of the written appeal.

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1. The DC erred because there is massive evidence of bad faith.
2. The DC erred because there was no factual support for the Appealed Order.
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2. The DC erred in ruling that the 60(b) motion was untimely
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2. Rule 60(b)(2) was a timely, valid argument.
3. Rule 60(b)(3) was a timely, valid argument.
4. Rule 60(b)(4) was a valid argument.
5. Rule 60(b)(5) was a valid argument.
6. Rule 60(b)(6) was a valid argument.

D. The District Court erred by failing to recuse.

1. The DC erred by failing to properly consider the Motion for Recusal.

2. The DC erred by claiming Windsor did not enumerate meritorious reasons for a reasonable person to doubt the impartiality of Judge Evans.

3. The DC erred by claiming that bias must be extra-judicial.

4. The DC erred by claiming that recusal and consideration of motions by another judge would ultimately make no difference as to the outcome of the case.

5. The DC erred because the impartiality of the judge might reasonably be questioned.

6. The DC erred by failing to consider that the cumulative effect of the facts presented would be grounds for recusal.

7. The DC erred by improper consideration of recusal under 28 U.S.C. 144.

8. The DC erred by claiming that a pro se party was required to file a certificate of "counsel of record."

E. The District Court erred by failing to consider Windsor's Constitutional justification for recusal.

F. The District Court erred by failing to consider Windsor's Motion to Reopen under the Court's Inherent Powers.

G. The District Court erred by claiming that Windsor's Rule 11 Motions for Sanctions were entirely lacking in merit.

H. The District Court erred by failing to give Windsor his legal right to file a Reply to Responses.

I. The District Court erred by failing to consider that this case casts doubt on the integrity of the judicial process.

VII. Conclusion -- Relief Sought

Certificate of Compliance
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I. STATEMENT OF JURISDICTION

District Court Jurisdiction:

Jurisdiction for the district court's subject matter is diversity among the parties pursuant to 28 U.S.C.A.§1332.

Court of Appeals Jurisdiction:

The United States Court of Appeals for the Eleventh Circuit has jurisdiction of this case pursuant to 28 U.S.C.A.§1291 because this is an appeal of final decisions of the United Stated District Court for the Northern District of Georgia, a district court within the Eleventh Judicial Circuit.

Filing Dates Establishing the Timeliness of the Appeal:

The "Final Order and Judgment" was entered December 9, 2008. [R.354.] (Doc.354.)

The Appealed Order was entered May 22, 2009. [R.390.] (Doc.390.)

The Notice of Appeal was filed June 15, 2009. (Doc.418.)

On June 23, 2009, the appeal fee was paid. (Doc.430.)

On July 13, 2009, the U.S.C.A. issued a notice to Windsor stating that Appellant's Brief was to be

filed within 40 days from July 6, 2009. This set the deadline at August 15, a Saturday, so the Brief is due on Monday, August 17, 2009, as confirmed with the Clerk.

Assertion that the Appeal is from an Appealable Order that establishes the Court of Appeals' Jurisdiction:

The Appealed Order [R.390.] (Doc.390) was entered on May 22, 2009. This Order is a final and appealable order.

II. STATEMENT OF THE ISSUES

This is an appeal from an order dated May 22, 2009 (Appealed Order").

The issues of error before the Court of Appeals are as follows:

Whether the District Court erred by claiming there was not any evidence that Maid acted in bad faith in the course of this litigation when the record contains a massive amount of evidence from Windsor, and it has not been disputed by Maid.

Whether the District Court erred because there was no factual support for the Court's positions on the Appealed Order.

Whether the District Court erred in denying Rule 60(b) Motion due to improper interpretation of the law.

Whether the District Court erred by claiming Windsor did not have valid arguments under Rule 60(b).

Whether the District Court erred by failing to recuse herself and using improper factors in considering the Motion to Recuse.

Whether the District Court erred by failing to consider Windsor's Constitutional justification for recusal.

Whether the District Court erred by failing to address Windsor's Motion to Reopen under the Court's Inherent Powers.

Whether the District Court erred by claiming that Windsor's Rule 11 Motions for Sanctions were entirely lacking in merit when the record contains a massive amount of evidence from Windsor, and it has not been disputed by Maid.

Whether the District Court erred by failing to give Windsor his legal right to have his Reply to Responses considered.

Whether the District Court erred by failing to consider that this case casts doubt on the integrity of the judicial process.

Whether the extraordinary circumstances require that this Court exercise its review and supervisory powers to review the entire case.

III. STATEMENT OF THE CASE

This is an appeal from an order of the United States District Court, Northern District of Georgia, Case Number 1:06-CV-0714-ODE; Order entered May 22, 2009 [R.390.] (Doc.390) ("Appealed Order"). The Appealed Order contains rulings on recusal, reopening the case, discovery, and sanctions for false sworn pleadings and discovery abuse.

A. Statement of the Proceedings Below

On August 29, 2005, Maid initiated this action in the Superior Court of Gwinnett County, Georgia, by filing a Verified Complaint seeking injunctive relief. It was verified by Glynn. [R.1.] (Doc.1.) [7]

On October 12, 2005, A&W filed a Verified Answer and told the truth; Alcatraz filed a counterclaim. Windsor signed the Verified Answer swearing that virtually everything in the Verified Complaint was false. [R.3.] (Doc.3;Doc.315;Dec.Pg.23-¶48-49.)

On March 20, 2006, Maid filed an "Updated Brief in Support of Motion for Temporary Restraining Order" alleging that A&W were improperly selling Maid vouchers. (Doc.6-Pg.1.) Maid claimed that A&W had violated the Lanham

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[7] Throughout this Brief, the Record Excerpts are referenced as "R.#." Citations to the Court Record are cited as "(Doc.#-Pg.#.)" "Dec#" is used to refer to the numbered declarations of William M. Windsor. Interested persons are defined on pages i to iv.

Act. (Doc.6-Pg.6.) A&W removed the action to the U.S. District Court. (Doc.1-Pg.1.)

On March 28, 2006, A&W filed a Response to Motion for TRO. Windsor told the truth under oath, swearing that Maid's claims were false. (Doc.4.)

On March 29, 2006, the case was assigned to Judge Evans. (Doc.8.)

On March 30, 2006, Judge Evans established the erroneous position that what Glynn of Maid said was true and what Windsor said was false. The TRO was issued. [R.10.] (Doc.10.) (Doc.361-Dec#2:Pg.25-¶81;Doc.381-Dec#7:P25-¶39.) (Doc.315.)

On March 30, 2006, A&W filed a motion with justification for a $400,000 bond. (Doc.11.) Judge Evans ordered only $5,000. (Doc.10.)

On April 11 and 12, 2006, Judge Evans held the only evidentiary hearing in this case on Maid's request for a preliminary injunction. (Doc.35;Doc.36;Doc.37.) At the conclusion of the evidence, Judge Evans informed Maid that they had seven days to identify a cause of action. (Doc.36-Pgs.166-167.)

On April 19, 2006, Maid filed a Proposed Order Granting Preliminary Injunction. This identified claims of tortious interference and false advertising as the legal arguments for the hearing a week before. (Doc.27-Pg.1.)

On May 12, 2006, Judge Evans granted a preliminary injunction ("PI") based upon Maid's new tortious interference claim. Judge Evans maintained her position that what Glynn said was true and what Windsor said was false. [R.33.] (Doc.33-Pg.1.)

On January 22, 2007, A&W moved for summary judgment ("SJ") on Maid's tortious interference claim, and Maid moved for SJ on tortious interference, attorney fees under O.C.G.A.§13-6-11, and all Alcatraz counterclaims. (Doc.146;Doc.148.)

On February 2, 2007, Judge Evans held an in-chambers hearing and ruled that testimony would not be allowed from Maid employees who Maid refused to make available for deposition during discovery (Sandra Carlson and others.) (Doc.174-Pgs.47-50.) Windsor brought the hundreds of lies, perjury, and Rule 11 violations of Maid to the attention of Judge Evans, but she cut him off in mid-sentence and ignored it. (Doc.174-Pgs.34,45-47,23-28.)

On August 9, 2007, Judge Evans granted Maid's motion for summary judgment ("SJ Order") and denied Alcatraz's motion. [R.251.] (Doc.251.)

On September 7, 2007, Alcatraz appealed the SJ Order (Appeal_No._07-14214-BB).

On September 10, 2007, Windsor appealed the SJ Order. (Appeal_No._07-14235-BB). (Doc.254;Doc.256.)

On October 16, 2007, Judge Evans entered a separate judgment on the August 9, 2007 Order. [R.280.] (Doc.280.)

On October 29, 2007, A&W filed a notice of appeal on the separate judgment (Appeal_No._07-15200-BB). (Doc.290;Doc.292.)

On November 13, 2007, A&W filed the appeal. (Appeal No. 07-14214-BB and Appeal No. 07-15200-BB).

On November 19, 2007, Windsor provided additional details about the dishonesty of Maid and Maid's attorneys in an affidavit in response to Maid's 28 U.S.C.§1927 Motion for Attorneys' Fees. (Doc.362-Dec#1,Exh.14.) Judge Evans ignored it. [R.325-Pgs.4-5.] (Doc. 325-Pgs.4-5.)

On December 26, 2007, Judge Evans entered an order staying the judgment pending appeal. (Doc.334.)

On October 21, 2008, the U.S.C.A. vacated and remanded the SJ Order in part. [R.344.] (Doc.344.)

On October 29, 2008, an order was entered making the USCA mandate the judgment of the DC. [R.346.] (Doc.346.)

On December 9, 2008, Judge Evans entered by consent a "Final Order and Judgment." [R.354.] (Doc.354.) A&W did not provide any releases; the

only promise was to not appeal to the Supreme Court. [R.354-Pg4.] (Doc.354-Pg.4.)

On April 24, 2009, Windsor began efforts to get the case reopened and to get Judge Evans recused:

> April 24, 2009 -- Motion to Recuse Judge Evans. (Doc.361.)
> April 24, 2009 -- Motion to Reopen Case. (Doc.362.)
> April 27, 2009 -- Motion for Sanctions. (Doc.363.)
> April 27, 2009 -- Motion for Sanctions. (Doc.364.)
> May 13, 2009 -- Motion for Discovery. (Doc.374.)
> May 20, 2009 – Reply to Response to Motion to Recuse. (Doc.381.)
> May 22, 2009 – Reply to Response to Motion to Reopen. (Doc. 385.)

On May 22, 2009, Judge Evans entered an order denying these motions. ("Appealed Order") [R.390.] (Doc.390.)

On June 4, 2009, Windsor filed Motions for Sanctions for Perjury against Glynn, Ruddy, and Schul; a Motion to Compel Documents; and a Second Motion to Recuse. (Doc.393;Doc.396;Doc.400;Doc.404;Doc.406.)

On June 15, 2009, Windsor filed the Notice of this Appeal. (Doc.418.)

On July 7, 2009, Judge Evans issued an order dismissing the Motion to Reconsider. (Doc.437.)

On July 15, 2009, Windsor filed the Twenty-Fifth Declaration of William M. Windsor to provide a complete timeline of virtually everything that has happened in this case. (Doc.457-Dec#25:Exhs.717-3153.)

On July 16, 2009, Windsor filed a Verified Complaint of Professional Misconduct against Maid's Attorneys and Judge Evans pursuant to LR83.1C-NDGa. (Doc.474.)

A. Statement of the Facts

This lawsuit is about a judge, several attorneys, and five people who lied again and again and again to improperly cost A&W approximately one million dollars in legal fees and litigation expenses and much more. (Doc.364-Dec#12:¶¶12007-12014.)

Maid's managers have committed hundreds of counts of perjury and have conspired to commit fraud upon the courts. (Doc.362-Dec#1:¶1;Doc.385:Dec#6:¶9;Doc.364-Dec#12:¶12007;Doc.377-Amended_Dec#3,Exh.1-28.) 46 of the 50 paragraphs in the Verified Complaint were false or incorrect and/or not based upon the personal knowledge of Glynn. (Doc.377-Amended_Dec#3-Exh.1:Pgs.1-158.)

The lies, false sworn pleadings, false pleadings, and discovery abuse continued

throughout this proceeding. This deprived A&W of a fair trial. (Doc.363;Doc.364-Dec#12;Doc.377-Exh.23;Doc.361-Exh.16.) The dishonesty of Maid and Maid's attorneys was compounded by the "mistakes" and bias of Judge Evans, who withheld documents from A&W, violated the rights of A&W by denying the most basic discovery, and acted without the impartiality required of a judge. [R.381.] (Doc.381; Doc.377-Amended_Dec#3:Exhs.8,22.)

Windsor has documented everything. (Doc.377;Doc.378;Doc462.) Evidence before the DC consists of the entire Docket, especially Doc.'s 361-362-363-364-368-374-377-378-381-383-385-462-474. [R.DS.]

Alcatraz was started in 1999 and is an Atlanta, Georgia-based booking service (similar to Expedia) – a seller of destination tours and activities, with agreements to purchase from over 1,100 companies across the United States as well as in Canada, Mexico, and in many countries worldwide. Alcatraz is also a licensed Georgia ticket broker. (Doc.378-Dec#5:¶6158.) (Doc.189:¶¶3-8.)

Appellant Windsor is the father of the 75% owner of Alcatraz, Ryan Windsor. (Doc.189-Pg.45:21-25,Pg.46:1.) Windsor was never an officer, director, shareholder, member, board member, investor, or employee of Alcatraz. (Doc.162-Pg.271;Doc.362-Exh.4:¶31.)

Appellee "Corporation" is a New York corporation that operates boat rides from the United States side of Niagara Falls. [R.1.] (Doc.1-

Pg.2,Pg.11.) Appellee "Steamboat" is a Canadian company that operates boat rides from the Canadian side of Niagara Falls. [R.1.] (Doc.1-Pg.2,Pg.11.)

On March 3, 2005, Maid entered into an oral agreement to allow Alcatraz to purchase tickets for the boat ride at Niagara Falls from Maid for the entire 2005 season (April to October). (Doc.3-Pg.14-18;Doc.153-Pgs.74-81;Doc.161-Pg.25:18-25,Pg.26;Doc.153-Pg.81;Doc.159,Pg.174.) Maid promised Alcatraz that they would honor vouchers sold throughout the entire 2005 season. (Doc.3-Pg.14,Pg.18;Doc.153-Pgs.79-81;Doc.161-Pgs.25-26;Doc.153-Pg.81.) The terms of the oral contract were specific. (Doc.377-Amended_Dec#3,Exh.24:¶9409) The term of the oral contract was less than a year. (Doc.377-Amended_Dec#3,Exh.24:¶9790.) It was a binding oral contract. (Doc.377-Amended_Dec#3,Exh.24:¶9372;Doc.378-Dec#5:¶7328.) Carlson entered into the contract with Alcatraz on March 3, 2005 in conversations with both Windsor and Carolyn Ballard Bazzo ("Bazzo"). (Doc.269-Pgs.93-100;Doc.377-Amended_Dec#3,Exh.24:¶9333;Doc.378-Dec#5:¶5294-5326.)

Maid has no admissible non-hearsay testimony that this oral contract was not made. (Doc.378-Dec#5,¶¶9723,9297,9347,9524,9583.) Carlson, the Maid employee who entered into the contract with Alcatraz, did not appear for scheduled depositions, and Judge Evans ruled that her January 22, 2007 affidavit would not be considered. (Doc.174-¶¶61-62;Doc.251-Pg.44.) Windsor and

Bazzo have both provided affidavits and deposition testimony stating that Carlson entered into a contract for the entire 2005 season. (Doc.377-Amended_Dec#3:Exh.24;Doc.362-Dec#4:Exh.7,¶35;Doc.3;Doc.153-Pgs.73-82;Doc.269:Pgs.93-103;Doc.378-Dec#5:¶¶9237,9372,9373,Exh.710.) (It is therefore nothing short of UNBELIEVABLE that Judge Evans ruled there was no proof of a contract and that this was not a SJ fact issue.) (Doc.251,Pgs.22-23.)

Alcatraz honored all of the terms of the oral contract with Maid. (Doc.377-Amended_Dec#3,Exh.24.) Maid breached the contract in a number of ways. (Doc.378-Dec#5:¶¶2109,6680.)

Beginning in early August 2005, Maid began refusing service to Alcatraz customers, defaming Alcatraz, and telling Alcatraz's customers that Alcatraz was an Internet Scam. [R3,Pgs.16-17.] (Doc.3,Pgs.16-17.) Maid refused to honor vouchers for more than 800 Alcatraz customers. [R3,Pgs.16-17.] (Doc.3,Pgs.16-17;Doc.35;Doc.36;Doc.37:Exh.20.)

No one from Maid ever spoke to Windsor or Alcatraz until after this lawsuit was filed despite many efforts by A&W. (Doc.362-Dec#1,Exh.1.)

On August 25, 2005, Glynn signed a sworn affidavit to be used with the Verified Complaint. [R.1.] (Doc.1.)

Windsor has documented that as many as 46 of the 50 paragraphs were false or incorrect. Proof of

all of Maid's false statements cited herein have been detailed in sworn affidavits with citations to the evidence. In the 28 exhibits to Amended Dec#3, each false statement is listed, and the proof of the falsity is provided. (Doc.377-Amended_Dec#3-Exh.1:Pgs.1-158.Exh.2;Doc.378;Doc.462)

Glynn swore that his statements were his personal knowledge and true, but that was false. (Doc.377-Amended_Dec#3-Exh.1,Exh.2.) In deposition testimony, Glynn admitted that statements in his Affidavit were not true. (Doc.159;Doc.377-Amended_Dec#3-Exh.1,Exh.2.) In deposition testimony, Ruddy and Schul testified that statements in Glynn's affidavit were not true. Doc.90; Doc.132;Doc.377-Amended_Dec#3-Exh.1,Exh.2;Doc.133;Doc.160;Doc.377-Amended_Dec#3-Exh.1,Exh.2.) Alcatraz, Windsor, and Bazzo testified that statements in Glynn's affidavit were not true. (Doc.377-Amended_Dec#3-Exh.1,Exh.2.)

Glynn's affidavit was drafted by Mr. Anderson, Mr. Brown, and Mr. Russ. (Doc.377-Amended_Dec#3-Exh.1-Pg.10-¶4;P99-¶200;Doc.#462-Exh.927,949-950-951;Doc.381-Dec#7:Pg.123:¶¶397-400,Pg.124: ¶¶401-405;Doc.377-Ex.23:Pg.5:9013-9015.)

On August 29, 2005, Maid filed the Verified Complaint with Glynn's verification. (Doc.1.) As many as 46 of the 50 paragraphs were false or incorrect. (Doc.377-Amended_Dec#3-Exh.1:Pg.1-158,Exh.2.)

Maid sued Windsor personally. The claims were false and malicious, but Judge Evans ignored it. (Doc.377-Amended_Dec#3-Exh.1:Pg.1-158,Exh.2.) Maid and Maid attorneys knew the claims were false. Ruddy testified that Windsor should not have been included in many of the sworn claims in Glynn's affidavit and verification. (Doc.377-Amended_Dec#3-Exh.1,Exh.2;Doc.90-Pgs.27,28,35.) Maid never produced any evidence of any valid legal claim against Windsor. (Doc.377-Amended_Dec#3-Exh.28:¶¶11101-11122.) Maid never amended the Verified Complaint. [R.DS.] (Docket)

Judge Evans did not find Windsor liable for tortious interference, the only claim asserted by Maid. [R.251:Pg.32.] (Doc.251:Pg.32.) Yet Judge Evans made Windsor individually liable for approximately $445,000 in legal fees and court costs. [R.251-Pg.43-44;R.325.] (Doc.251:Pg.43-44;Doc.325.)

On December 28, 2005, there were two false statements in Maid's Response to Interrogatories sworn to by Glynn. (Doc.377-Amended_Dec#3-Exh.3.) (Doc.377-Amended_Dec#3-Exh.3,Note:¶9047.)

On December 30, 2005, Maid's Response to Defendants' First Request for Production of Documents was a false and improper pleading. This began a significant scheme of discovery abuse. (Doc.361-Dec#2:Exh.16.)

On March 14, 2006, Glynn signed a sworn affidavit. (Doc.267.) It contains as many as 18 statements that Windsor has documented as false or

incorrect. (Doc.377-Amended_Dec#3-Exh.4:Pgs.1-91,Exh.5.)

The sole basis for the Preliminary Injunction was the claim that A&W were selling vouchers to be redeemed by Maid. They were not. (Doc.6;Doc.7;Doc.10;Doc.15;Doc.16:Pg.3:¶8;Doc.24.) Glynn, Ruddy, and Schul admitted in deposition testimony that there was no proof. (Doc.362-Dec#4-Exh.4:¶¶458-462,469,470,537.)

On March 28, 2006, Maid filed an Updated Brief in Support of Motion for TRO. (Doc.6.) Windsor has documented that as many as 18 statements in the Updated Brief were false or incorrect. (Doc.377-Amended_Dec#3,Exh.4:Pgs.1-91,Exh.5.)

On March 28, 2006, Maid also filed an Amended Updated Brief in Support of Motion for TRO. (Doc.7) Windsor has documented that as many as 18 statements in the Amended Updated Brief were false or incorrect. (Doc.377-Amended_Dec#3,Exh.4:Pgs.1-91,Exh.5.)

On April 11, 2006, Glynn gave sworn testimony at the Preliminary Injunction Hearing. (Doc.35;Doc.36;Doc.37.) Windsor has documented that Glynn's testimony included as many as 35 statements that were false or incorrect. (Doc.377-Amended_Dec#3-Exh.6:Pgs.1-123.)

On April 19, 2006, Maid filed a Proposed Order Granting Preliminary Injunction. (Doc.27.) Windsor has documented that as many as 164

statements were false or incorrect. As many as 158 of the 164 statements are proven false by the testimony of Maid's managers. (Doc.377-Amended_Dec#3-Exh.7:Pgs.1-310.)

On May 2, 2006, Ruddy signed an Affidavit. (Doc.29.) Windsor has documented one false sworn statement. (Doc.377-Amended_Dec#3:Exh.8:Pgs.1-6.)

On May 3, 2006, Maid filed a Corrected Proposed Order. (Doc.29.) Windsor has documented that as many as 164 statements were false or incorrect. (Doc.377-Amended_Dec#3-Exh.7:Pgs.1-310.) As many as 158 of the 164 statements are proven false by the testimony of Maid's managers. (Doc.377-Amended_Dec#3-Exh.7-Pgs.1-310.)

On May 12, 2006, Judge Evans signed an Order Granting Preliminary Injunction (the "PI Order"). [R.33.] (Doc.33.) The PI Order misstated the findings that could be made based upon the evidence presented, misstated the standard under which the matter was considered, attempted to effectuate a consolidation of the hearing on a request for preliminary injunctive relief with a trial on the merits, sought to dispose of claims not even presented, and relied upon after-the-motion/hearing-asserted claims. (Doc.377-Amended_Dec#3-Exh.9:Pg.1)

The PI Order contains as many as 39 false statements. Windsor has documented that as many as 17 of these statements are proven false by the testimony of Maid's managers. (Doc.377-

Amended_Dec#3-Exh.:Pgs.1-81.) Judge Evans had the evidence before her, so she was obligated to know the facts. Judge Evans was subsequently advised by A&W that sworn affidavits from customers proved that the alleged damages to justify the injunction had been proven to be false, but Judge Evans did nothing. (Doc.174:Pg.31.)

On November 15, 2006, Ruddy gave 30(b)(6) deposition testimony for Steamboat. (Doc.90-Doc.132.) Windsor has documented that as many as 139 statements were false or incorrect. As many as 76 of these statements are proven false by the testimony of Maid's managers. (Doc.377-Amended_Dec#3-Exh.10:Pgs.1-108.)

On November 27, 2006, Berry signed a sworn affidavit. (Doc.230-Exh.JB-18.) Windsor has identified as many as 12 false sworn statements. (Doc.230.)

On December 4, 2006, Glynn gave a deposition. (Doc.159.) Windsor has documented that as many as 89 statements were false or incorrect. As many as 46 of these statements are proven false by the testimony of Maid's managers. (Doc.377-Amended_Dec#3-Exh.11:Pgs.1-68.)

On December 5, 2006, Schul gave deposition testimony. (Doc.133:Doc.160.) Windsor has documented that as many as 54 statements were false or incorrect. As many as 24 of these statements are proven false by the testimony of Maid's managers. (Doc.377-Amended_Dec#3-Exh.12:Pgs.1-44.)

On December 20, 2006, Berry signed a sworn affidavit. (Doc.230-Exh.JB-27.) Windsor has identified as many as 7 false or incorrect statements. (Doc.230.)

On January 5, 2007, Berry gave deposition testimony. (Doc.230.) Windsor has identified as many as 113 statements that are false or incorrect. (Doc.230.)

On January 22, 2007, Maid's Attorneys filed so-called "Statements of Undisputed Fact" in Maid's Motion for Summary Judgment. (Doc.147.) Windsor has documented that as many as 130 of 235 statements are false or incorrect. (Doc.377-Amended_Dec#3-Exh.13:Pgs.1-613.)

On January 22, 2007, Ruddy signed a sworn affidavit. (Doc.147-Ruddy_Affidavit.) Windsor has documented as many as six false statements. (Doc.377-Amended_Dec#3-Exh.14:Pgs.1-5.)

On January 22, 2007 Sandra Carlson signed a sworn affidavit. (Doc.147-Carlson_Affidavit.) Windsor has documented as many as 10 false statements. (Note: Judge Evans ruled this affidavit inadmissible.) (Doc.174-Pgs.61-62; Doc.377-Amended_Dec#3,Exh.15.)

On August 8, 2007, Judge Evans signed a Summary Judgment Order ("SJ Order"). [R.251.] (Doc.251.) Windsor has documented that as many as 210 of the 416 statements by Judge Evans are false or incorrect or are conclusions based on false

statements. (Doc.377-Amended_Dec#3-Exh.22:Pgs.1-184.)

Judge Evans claimed in the SJ Order that she rejected the statements of fact presented by the parties, so she drafted the facts based on the evidence. (Doc.251:Pg.3.) Judge Evans invented facts and made statements that are proven to be false by the evidence. (Doc.377-Amended_Dec#3,Exh.22)

On October 30, 2007, Maid filed a Motion for Attorneys' Fees under 28U.S.C.§1927. (Doc.299.) Maid's motion was filled with false statements. (Doc.315.)

On May 12, 2009, Maid filed its Response to Windsor's Motion to Reopen. (Doc.366.) Windsor has documented as many as 23 false statements in the Response that was not supported by affidavits. (Doc.385-Dec#6:¶7,Exh.1:Pgs.1-29.)

On May 22, 2009, Judge Evans issued an order (the "Appealed Order") denying Windsor's motions. [R.390.] (Doc.390.)

Maid has not filed a single affidavit in 2009, so Windsor's declarations are uncontroverted.

IV. SUMMARY OF ARGUMENT

Appellant Windsor asserts that the Appealed Order constitutes error summarized as follows:

Windsor seeks reversal of the Appealed Order. Judge Evans issued the order denying Windsor's Motion to Reopen the Case, Motion to Recuse, and two Motions for Sanctions. [R.390.] (Doc.390.)

Judge Evans has shown pervasive bias against Windsor from the first day that she became aware of this lawsuit. The denial of these motions was because of the bias, not based upon the merits or law.

The Appealed Order contains completely, totally, unbelievably false statements. Judge Evans stated under oath as a judge that there is no evidence of bad faith by Maid and Maid's attorneys. She stated that Windsor's motion "is entirely lacking in substantive merit." But close to 2,000 pages of sworn testimony and evidence was submitted, and it was not controverted by Maid. (Brief,Pgs.29-30.)

There is no factual support for the Appealed Order. Maid did not file a single affidavit. (Brief,Pg.31.)

Judge Evans improperly interpreted Rule 60(b). She incorrectly defined "proceeding" to exclude Rule 60(b) motions. (Brief,Pgs.32-33.)

Judge Evans erred by claiming the Rule 60(b) motion was untimely by ignoring the facts and incorrectly applying the law. (Brief,Pgs.33-35.)

Judge Evans incorrectly and insufficiently responded to arguments under the six sections of Rule 60(b). (Brief,Pgs.36-54.)

Judge Evans improperly considered the Motion to Recuse. She ignored the laws, applied the wrong standard, and displayed her bias in so doing. (Brief,Pgs.55-64.)

Judge Evans violated Windsor's Constitutional rights and failed to give the motions proper consideration. (Brief,Pgs.64-66.)

Judge Evans stated that Windsor's motions for sanctions were "entirely lacking in substantive merit." But the merit was overwhelming. (Brief,Pg.66.)

V. STANDARD OF REVIEW

Windsor submits that the standard of review should be plain error. The errors in this case are so fundamental that, absent the errors, an unbiased judge would have reached a different result.

Motions to recuse have been reviewed for abuse of discretion. (***United States v. Bailey***, 175 F.3d 966, 968 (11th Cir. 1999).)

Relief under Rule 60(b) has been reviewed for abuse of discretion. (See ***High v. Zant***, 916 F.2d 1507, 1509 (11th Cir. 1990), cert. denied, 499 U.S. 954 (1991).)

Since plain error has permeated the entire proceedings due to Judge Evans' bias and the dishonesty of Maid and Maid's attorneys, Windsor respectfully proposes that this Court elect to conduct a de novo review of the entire record under both its review and supervisory powers.

Plain-error review involves four prongs. (***United States*** v. ***Olano***, 507 U. S. 725, 732–736 (1993).) Windsor meets the requirements.

Errors have been made of such a nature that to leave them uncorrected would result in damage to the integrity, reputation, and fairness of the judicial process.

Regardless of the decision, some of the errors by Judge Evans should be reviewed de novo due to

legal error – erroneous conclusions on questions of the application, interpretation, and construction of law.

ARGUMENT AND CITATIONS OF AUTHORITY

The legal system has been structured so that grave miscarriages of justice, such as the one in this case, should not happen.

Oaths theoretically require honesty. Every witness, attorney, and judge swears an oath to the truth. Attorneys and judges swear to abide by codes of conduct. But when the witnesses for Maid lied and committed perjury hundreds of times; when their attorneys suborned that perjury; when Maid attorneys violated their oaths and the law for the purpose of committing fraud upon the courts; when Judge Evans actively participated in supporting the wrongdoing; and when all the lies deceived the U.S.C.A. on appeal, the most basic rights of Windsor were violated.

The system theoretically provides safeguards and checks and balances. Rules 11, 34, and 37 and Local Rule 83.1C provide means to call party and attorney dishonesty to the attention of the judge. Rule 60 provides the ability for grave miscarriages of justice to be corrected by reopening cases and setting aside wrongful judgments. 28 U.S.C. 144 and 455 provide the means to seek recusal of a judge. But in this case, Judge Evans ignored the pleas under Rule 11, 34, and 37 claiming there was no proof despite mountains of it. In this case, Judge Evans improperly denied the Motion to Reopen. In this case, Judge Evans refused to be recused despite pervasive bias. In this case, Judge Evans ignored the reports of massive perjury and refused to even consider that Maid and Maid attorneys should be

sanctioned. There is no factual or legal basis for the actions of Judge Evans.

If there has ever been a case where extraordinary circumstances require that wrongs are righted and that this Court exercise its review and supervisory powers, this is the case. Windsor has been unable to find any cases that have dishonesty and fraud upon the court of anywhere near this magnitude.

The worst of hardships have resulted from the dishonesty in this case. A&W have lost approximately $1,000,000.00, have been saddled with an injunction that is a violation of Georgia law, have been defamed, and have lost years of man hours fighting the injustice. Now others are unfairly using the erroneous decision in this case in litigation against Alcatraz in efforts to "void" O.C.G.A.43-4B. To Alcatraz, the financial cost represents years of pre-tax profits. To Windsor, the financial cost represents money that this retiree expected to live on in retirement.

None of this should have happened. The hardship has been extreme, unexpected, unfair, and illegal. And it continues.

Maid and Maid's Attorneys deliberately planned and carefully executed an unconscionable scheme to obtain judgments and injunctions against A&W, to force A&W to incur significant legal expenses and to obtain money from A&W. (Doc.377-Amended_Dec#3;Exh.23;Doc.363;Doc.364-Dec#12.)

As hard as it may be for fellow Atlanta judges to accept that a peer has committed serious judicial misconduct, Windsor prays that personal feelings and doubt can be put aside to review the evidence because there has been a grave miscarriage of justice.

Amended_Dec#3 and the exhibits thereto provide proof of the massive dishonesty and bad faith. (Doc.377-Amended_Dec#3:Exhs.1-28;also-Doc.378-Dec#5;Doc.462.)

A. THE DISTRICT COURT ERRED BY CLAIMING THERE WAS NOT ANY EVIDENCE THAT PLAINTIFFS ACTED IN BAD FAITH IN THE COURSE OF THIS LITIGATION AND BY FAILING TO HAVE FACTUAL SUPPORT FOR ITS RULINGS.

The standard of review should be plain error.

1. The District Court erred because there is massive evidence of bad faith.

The Appealed Order says: "The Court finds that there is not any evidence that Plaintiffs acted in bad faith in the course of this litigation." "...Windsor complains about a large number of Plaintiffs' filings....Windsor's motion is entirely lacking in substantive merit." (Doc.390-Pg.13.)

Something is rotten in ~~Denmark~~ Judge Evans' chambers. Windsor provided HUNDREDS of pages

of evidence of bad faith and intentional dishonesty. (Doc.361;Doc.362;Doc.363;Doc.364.)

And not a single statement has been controverted by Maid! (Brief,Pg.20.)

"Not any evidence" consists of 1,905 pages of sworn testimony by Windsor, 810 exhibits, and thousands of citations to evidence. And that is just what was filed from April 24, 2009 to May 22, 2009 when the Appealed Order was issued.

Specific evidence was the following:

1. Doc.361 (Motion to Recuse with Dec#2–95 pages-23 exhibits);
2. Doc.362 (Motion to Reopen with Dec#1–36 pages-23 exhibits; Dec#3–13 pages and 28 exhibits, and Dec#4-11 exhibits);
3. Doc.363 (Motion for Sanctions with Dec#11–184 pages);
4. Doc.364 (Motion for Sanctions with Dec#12–44 pages);
5. Doc.368 (151 customer declarations);
6. Doc.374 (Motion for Discovery);
7. Doc.377 (Amended_Dec#3–13 pages-28 exhibits);
8. Doc.378 (Dec#5–1355 pages-736 exhibits);
9. Doc.381 (Reply to Response on Motion to Recuse–Dec#7–127 pages);
10. Doc.383 (Support of Motion to Recuse – Dec#8 -7 pages);
11. Doc.385 (Reply to Response to Motion to Reopen–Dec#6–31 pages).

No reasonable person could agree with Judge Evans statement that "Windsor's motion is entirely lacking in substantive merit." Entirely lacking in substantive merit is defined as "completely missing actual factual content." This statement is excellent proof of pervasive bias.

Judge Evans does not seem incompetent, so she is hopelessly biased.

Windsor's reports of perjury, false sworn pleadings, and Rule 11 violations were never given consideration by Judge Evans. She did absolutely nothing about the claim of Windsor pre or post-SJ that Maid had lied hundreds of times and that Maid's attorneys had repeatedly violated Rule 11. (Doc.174:Pgs.34,45-47,23-28)

The system of checks and balances failed when Judge Evans allowed her pervasive bias to punish A&W with perjury and obstruction of justice. The SJ decision was based on an erroneous view of the law and a clearly erroneous assessment of the evidence.

> "[a] district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." (***FDIC v. United Pac. Ins. Co.***, 152 F.3d 1266, 1272 (10th Cir.1998) (internal quotation omitted); ***Zurich v. Matrix***, 426 F.3d 1281, 1286-1288 (10th Cir. 2005).)

2. **The District Court erred because there was no factual support for the Appealed Order.**

Judge Evans made various statements that seem to purport to be facts in the Appealed Order, but these statements are not supported by any evidence or citations and should not be considered. Maid did not file any affidavits in 2009. Windsor's fact statements have not been controverted. (Brief,Pg.20.) That's because they are true, and Maid is now afraid to make more statements under oath due to perjury.
(Doc.361;Doc.362;Doc.363;Doc.364.)

This Court must not accept that what Judge Evans writes is true. Proof of this is provided in the Appealed Order and Exhibits 9 and 22 to Amended Dec #3 listing each false statement and providing proof of the false statements. (Doc.377;Doc.390) [R.390.]

B. THE DISTRICT COURT ERRED IN DENYING RULE 60(b) MOTION DUE TO IMPROPER INTERPRETATION OF THE LAW.

This should be reviewed de novo as these are questions of the application, interpretation, and construction of law.

1. **The District Court erred by improperly defining "proceeding" to exclude a Rule 60(b) motion or a Motion to Recuse.**

The Appealed Order says: "Proceeding" does not include a Rule 60(b) motion for relief from

judgment. Such an interpretation would inappropriately undermine the finality of judgments." (Doc.390:Pg.6,Footnote-3.)

BUT, Rule 60(b) is used **to obtain relief from judgments**, so it is designed **to attack the finality of judgments**. Rule 60(b) actions are permitted under the FRCP as are Rule 60(d) motions, independent actions for fraud upon the court, and other actions. (Doc.362.)

A "legal proceeding" is defined as "all actions that are authorized or sanctioned by law and instituted in a court or a tribunal for the acquisition of rights or the enforcement of remedies." 60(b) motions are actions authorized by law and instituted in the court where a party seeks to acquire a right to overturn a prior decision. Justice Scalia explains 60(b):

> "...a provision whose whole purpose is to make an exception to finality." (***Gonzalez v. Crosby***, (04-6432) 545 U.S. 524 (2005), 366 F.3d 1253, affirmed, on write of certiorari to the United States Court of Appeals for the Eleventh Circuit.)
>
> "The language of Rule 60(b) confirms this understanding of the word "proceeding." The rule allows a party to seek relief from "a final judgment, order, or *proceeding*." Fed. R. Civ. P. 60(b) (emphasis added). This indicates that filing a Rule 60(b) motion initiates a new proceeding that is separate from the proceeding from which the movant seeks relief

(or, as in this case, the proceeding giving rise to the judgment from which the movant seeks relief)." (***Reid v. Angelone***, 369 F.3d 363, 367-70 (4th Cir.2004).)

In ***Burke v. Smith***, an action ended in settlement in July 1995. Five years later, Tammy Burke filed a motion **in the same lawsuit** ("closed" for five years). The district court set aside the judgment as to Tammy. The Eleventh Circuit went a step further and set aside the judgment as to all plaintiffs, even though they had received $987,500. (***Burke v. Smith***, 252 F.3d 1260 (11th Cir. 2001).)

Windsor has reviewed Rule 60 actions that have been filed as many as 40 years after the initial proceeding was "closed."

In ***Hazel-Atlas Glass Co. v. Hartford-Empire Co.***, 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944), an action was successfully filed nine years later. This is the landmark decision on Rule 60, and Hartford's wrongdoing was child's play compared to what Maid, Maid's attorneys, and Judge Evans have done.

Judge Evans' claim that a Rule 60 motion does not constitute a proceeding is incorrect.

When Windsor filed the Motion to Reopen the Case and Motion to Recuse on April 24, 2009, the motions activated a proceeding.

2. **The District Court erred in ruling that the 60(b) motion was untimely.**

Rule 60(b) reads: "On motion and just terms, the court may relieve a party or its legal representative from a **final judgment**, order, or proceeding...." (emphasis added.) (***Bradford v. Unum***, D.C. Doc.No. 03-00086-CV-OC-10GRJ, at 4, Appeal from the United States District Court for the Middle District of Florida (11th Cir. May 14, 2007).) (Doc.385:Dec#6,¶72.)

Rule 60(b) allows certain claims within a year and others at reasonable times (that has been 40 years or more later).

"A final decision is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." (***Pitney Bowes, Inc. v. Mestre***, 701 F.2d 1365, 1368 (11th Cir. 1983) (quotation omitted).)

"There is no final order if claims remain unresolved and their resolution is to occur in district court." "For the purposes of 60(b), an order that 'wraps up all matters pending on the docket' renders a decision final." (***Torres v. Chater***, 125 F.3d 166, 168 (3d Cir. 1997.).)

In the Appealed Order, Judge Evans noted the 2007 SJ Order (Doc.251), BUT failed to note four important facts:

(1) The SJ Order was appealed (Doc.254;Doc.256).

(2) The judgment was vacated and remanded in part on October 21, 2008. [R.344.] (Doc.344.) Therefore, there were matters pending on the docket in October 2008. The ruling of the U.S.C.A. **did alter the judgment** as it vacated the award of attorney's fees. Windsor was not found liable for tortious interference, the only cause of action, so when the attorney's fees order was vacated, this was the only issue as to Windsor. [R.251:Pg.32.] (Doc.251:Pg.32.)

(3) On October 28, 2008, Judge Evans entered an order declaring the mandate of the U.S.C.A. to be the judgment of the court. [R.346.] (Doc.346.)

(4) Then the **Final Order** and **Judgment** was entered on December 9, 2008, just five months before the Motion to Reopen was filed. [R.354.] (Doc.354.) The only judgment identified as a "Final Judgment" in this case was dated December 9, 2008. [R.354.] (Doc.354.) So, Windsor's motion is timely. (Doc.385-Dec#6:¶71-76.)

In his motion, Windsor specified the "final order, judgment, or proceeding." (Doc.362-Dec#1,¶3,56,prayer-Pg.25;Doc.385:¶¶61,72,73,prayer-Pg.20;Doc.385-Dec#6:¶¶72,73.)

C. THE DISTRICT COURT ERRED BY CLAIMING WINDSOR DID NOT HAVE VALID ARGUMENTS UNDER RULE 60(b).

1. **Rule 60(b)(1) is valid based upon one interpretation of "excusable neglect," and the "Final Order and Judgment" was timely.**

This should be reviewed de novo.

Rule 60(b)(1) provides that the Court may relieve a party from the effects of an order for "mistake, inadvertence, surprise, or excusable neglect. This includes errors made by judicial officers as well as parties. (***Wesco Prod. Co. v. Alloy Auto. Co.***, 880 F.2d 981, 984-85 (7th Cir. 1989).)

Windsor has established mistake, errors by judicial officers, and neglect. (Doc.362.)

The Appealed Order says: "In order to obtain relief for excusable neglect under Rule 60(b)(1), Windsor must show that he had a meritorious defense, that Plaintiffs would not be prejudiced if the order was vacated, and that he had a "good reason" for the neglect." (Doc.390-Pg.9:7-12.)

Judge Evans did not address meritorious defense or prejudice, so we must accept those as proven and focus on "excusable neglect."

Mistakes in this case have been detailed in Doc.362-Dec#1,¶¶8-27.

> In *Pioneer Inv. Serv. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993) the Supreme Court defined excusable neglect. "Neglect" means "'to give little attention or respect' to a matter . . . 'to leave undone or unattended to es[pecially] through carelessness'" *Id.* at 388 (citation omitted). "The word therefore encompasses both simple, faultless, omissions to act, and more commonly, omissions caused by carelessness." *Id.* Making the determination that neglect is excusable, "is at bottom an equitable one, taking into account all relevant circumstances surrounding the party's omission." *Id.* at 395. Factors that a court should consider include: "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.*

Factor #1-Danger of Prejudice: The Bazzo Depo provides evidence of what actually happened in this case. It will serve justice and should not be viewed as prejudicing Maid. The case will proceed on the merits. Having to incur the risk and cost of moving forward does not constitute prejudice. There has been no trial. This will simply restore the parties to an even footing, except for the million dollars that A&W have lost. (Doc.362-Dec#1:¶10.)

Factor #2-Length of the Delay and its Potential Impact on the Judicial Proceedings: This motion was filed only four months after the Final

Order and Judgment was entered following the appeal of the SJ.

Factor #3-Reason for the Delay: This motion was filed on April 24, 2009 as soon as possible after newly-discovered evidence. Windsor was unaware until April 2009 of the existence of a remedy such as Rule 60(b).

Factor #4-Good Faith: Windsor is acting in the best of faith. Windsor did not want to settle with Maid. Windsor has devoted 16-hours a day for months to researching the law, and this motion absolutely must be approved.

5. All Relevant Circumstances: Mr. Raley failed to file the most important deposition in the case, the deposition of Carolyn Ballard Bazzo ("Bazzo Depo"), despite TWO notices filed by Maid asking that the deposition be filed. It was his responsibility, and A&W always did everything that was asked of them and quickly.

Bazzo confirms the oral contract for the 2005 season that Judge Evans improperly ruled did not exist. This is the KEY ISSUE in this case. (Doc.362-Dec#1:¶14.)

A&W asked Mr. Raley by fax and email to be sure everything needed was filed. Raley invoices indicate that a new hire misread the first notice and failed to review the second notice. Mr. Raley was not minding the critical filings during summary judgment time, and he failed to file the deposition. A&W did not make the mistake. A&W specifically

communicated to Mr. Raley the importance of being sure that everything was filed. This was a matter beyond the control of A&W. (Doc.385-Dec#6:¶20,Exh.6.) Windsor did not place the fax, emails, and invoices into evidence out of fear that it might void Attorney-Client Privilege, but these and other documents are available.

The Eleventh Circuit has held that a party may claim "excusable neglect" if its "failure to timely perform a duty was due to circumstances which were beyond (its) reasonable control." (***In re South Atlantic Financial Corp.***, 767 F. 2d 814, 817 (CA11 1985).)

The agreement between Alcatraz, Windsor, and Mr. Raley was that Raley was to file everything. Mr. Raley received and paid for all deposition transcripts; did all calendaring; handled the filing of all depositions and all documents directly with the Court; obtained the signature page from Bazzo; reviewed all mail; reviewed the court docket; and handled everything but discovery. Windsor never filed anything himself. Windsor sent a fax to Raley stating that he was concerned that items needed to be filed. Mr. Raley prepared the summary judgment filing, and Windsor was not afforded the opportunity to review it. The filing of Bazzo's deposition was beyond A&W's reasonable control. (Doc.361-Dec#1:Pg.5,¶11.)

The Supreme Court says a court must take account of all relevant circumstances. Windsor detailed these in the Motion to Reopen, and the basic

issues are stated in Doc.362, ¶10 and Dec#1, ¶10. (Doc.385-Dec#6:¶17.)

The August 8, 2007 SJ Order indicates that A&W's claims would have prevailed as a matter of law with Bazzo's deposition testimony. Judge Evans *claimed* there was no proof of the oral contract for the entire 2005 season. [R.251:Pg.37.] (Doc.251:Pg.37.) While that was clearly erroneous, Bazzo's Deposition provides 84 pages of testimony. (Doc.269:¶¶48-131.) The filing of the deposition would change the outcome of this case with an unbiased judge. (Doc.385-Dec#6:¶26.)

Worst case, the oral contract between the parties was a fact issue for the jury to decide. There are three witnesses. Bazzo and Windsor have testified to the truth while attorneys for Maid have made false statements with no testimony to support. Maid never had any evidence before the court to contradict the evidence of A&W; Carlson provided no admissible evidence. (Doc.381-Dec#7:Pgs.33-38.) Since there was a contract, nothing that A&W did was wrong, and everything that Maid did was wrong. (Doc.362-Dec#1:¶13.) That Judge Evans claimed there was no fact issue on the oral contract was a HUGE ERROR. (See:Doc.377-Exh.24.)

Judge Evans gave only two sentences of justification in the Appealed Order for why 60(b)(1) did not apply:

1. "Windsor's failure to file the Bazzo deposition is not excusable...."

2. "Windsor's claim that this Court withheld evidence from A&W during discovery merely seeks to rehash a discovery issue.... (Doc.209)." (Doc.390-Pg.95.)

Judge Evans' refusal to excuse the failure to file the deposition is proof of bias. Windsor's assertion that Judge Evans withheld relevant documents from A&W definitely has merit because the withheld documents contained extremely important information for A&W. Judge Evans had an obligation to review those documents and provide them to A&W unless Judge Evans was shown bogus documents. (Doc.385-Dec#6:¶30;Doc.361-Dec#2:¶¶104-149.)

The fact that Judge Evans continues to rule against Windsor on this discovery issue is proof of bias and wrongdoing. (Doc.385-Dec#6:¶31.)

2. **Rule 60(b)(2) is valid due to newly-discovered evidence, and the motion was timely.**

This should be reviewed de novo.

Rule 60(b)(2) provides that relief is available based upon newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b).

Judge Evans incorrectly claims: "Windsor's claims as to the two contracts again seeks to rehash the merits of this Court's prior discovery orders, which, as discussed above, is an inappropriate basis for a Rule 60(b) motion." (Doc.390-Pg.9.)

The issue with the two contracts has nothing to do with "rehashing." First, it was clearly wrong for Maid to have claimed those contracts were "irrelevant." Second, this has to do with proof of fraud upon the courts. Windsor now has copies of the actual contracts through other sources. The issue is whether the contracts presented to Judge Evans by Maid were bogus contracts, or whether Judge Evans wrongly withheld the valid documents.

To obtain relief under Rule 60(b)(2), a party must show that evidence was (1) discovered after trial, (2) material, (3) not merely impeaching or cumulative, (4) likely to produce a different result on retrial, and (5) that the party exercised due diligence to obtain the evidence. (***Waddell v. Hendry Co. Sheriff's Office***, 329 F.3d 1300, 1309 (11th Cir. 2003).)

Windsor has shown that the evidence discovered meets these requirements:

Requirement #1-Disvovered After Trial: These contracts were not obtained until April 2009 despite diligent efforts.

Requirement #2-Material: These contracts are extremely material as they provide an explanation for lies and deceit of Maid; establishes a motive for the wrongful actions of Maid; establishes that Maid had unclean hands; and establishes documentary proof of the fraud and dishonesty of Maid. (Doc.362-Dec#1:¶¶21-32,¶¶77-123,Exhs.1,2.)

Requirement #3-Not Merely Impeaching or Cumulative: These contracts provide completely new information.

Requirement #4-Likely to Produce a Different Result: This new information will change the way an honest judge looks at this case. A&W will be meritorious at trial. (Doc.362-Dec#1:¶30.)

Requirement #5-Exercise Due-Diligence to Obtain: A&W served two Requests for Production, filed a Motion to Compel, filed Freedom of Information Act requests, and called the two governments involved – all to no avail. A legal action was filed in Canada in 2009 to obtain the documents.

Judge Evans incorrectly claims: "The declarations of Alcatraz employees and customers, and the fax that Windsor received on March 3, 2005, do not constitute 'new evidence' that could not have been discovered with due diligence, as Windsor admits that this evidence was in Windsor's possession before this Court's ruling on summary judgment and it was simply not filed or emphasized to the Court." (Doc.390-Pg.10:15-20.)

The March 3 fax was not in Windsor's "possession" at summary judgment. (Doc.381-Dec#7,¶77:Doc.361-Dec#2, ¶91.) It was found misfiled by accident in Windsor's personal property in his basement long after discovery closed and SJ was issued, long after at least 40 man hours of searching failed to find anything in 2005 and 2006. Discovery takes place when a party sees or hears

information, not when a party suspects the existence of evidence that it tries to obtain and cannot obtain. (Doc.385-Dec#6:¶33.)

Windsor did not know he had this fax. Windsor did not even remember that he had received such a fax. Maid never produced the fax. Carlson never appeared for any of her many scheduled depositions. The fax was not in Alcatraz's files where it should have been. (Doc.385-Dec#6:¶34.)

The Carlson fax is clearly material. It supports A&W's sworn claims about what happened on March 3, 2005, and it proves that Maid's alleged statement of facts was false in this regard. It also proves that Carlson's inadmissible affidavit (Doc.147) was false and destroys any "credibility." (Doc.385-Dec#6:¶35.) This relates to the KEY issue in the case. (Doc.362-Dec#1:¶34-35,Exh.3.)

3. **Rule 60(b)(3) is valid due to fraud, and this motion was timely.**

This should be reviewed as plain error.

To obtain relief based upon fraud under Rule 60(b)(3), the moving party must prove by clear and convincing evidence that the adverse party obtained the verdict through fraud, misrepresentations, or other misconduct. The moving party must also demonstrate that the conduct prevented them from fully presenting his case. ***Rozier v. Ford Motor Co.***, 573 F.2d 1332, 1339 (5th Cir. 1978).

Judge Evans claimed: "Windsor's arguments under Rule 60(b)(3), (4) and (5) are also without merit, as they constitute cursory allegations of dishonesty with no evidentiary support or contentions that the Court should revisit its prior rulings in this case. (See Doc.362, at 16-22) Such arguments are not proper grounds for relief under Rule 60." (Doc.390,P10.)

Cursory is defined as "performed with haste and scant attention to detail." This is a bizarre claim by Judge Evans because Windsor provided thorough, thoughtful, carefully analyzed, excruciatingly detailed citations of proof of the dishonesty compiled over three years. Specific evidence before Judge Evans was Doc.361 (Motion to Recuse with Dec#2–95 pages and 23 exhibits); Doc.362 (Motion to Reopen with Dec#1–36 pages and 23 exhibits, Dec#3–13 pages and 28 exhibits, and Dec#4 and 11 exhibits); Doc.363 (Motion for Sanctions with Dec#11–184 pages); Doc.364 (Motion for Sanctions with Dec#12 -44 pages); Doc.368 (151 customer declarations); Doc.374 (Motion for Discovery); Doc.377 (Amended Dec#3–13 pages and 28 exhibits); Doc.378 (Dec#5 -1355 pages and 736 exhibits); Doc.381 (Reply to Response on Motion to Recuse–Dec#7–127 pages); Doc.383 (Support of Motion to Recuse–Dec#8 -7 pages); Doc.385 (Reply to Response to Motion to Reopen–Dec#6–31 pages). All declarations have been sworn under penalty of perjury before a notary.

This is 1,905 pages of sworn testimony, 810 exhibits, and thousands of citations to evidence.[8]

The fact that Judge Evans said this constitutes "cursory allegations of dishonesty with no evidentiary support or contentions" is excellent proof of bias by Judge Evans. The evidence of misconduct is overwhelming, and it prevented A&W from fully presenting their case.

4. **Rule 60(b)(4) is valid because the District Court acted in a manner inconsistent with due process of law, and this motion was timely.**

This should be reviewed under the plain error standard.

On the issue of due process, the Appealed Order says: "His allegations are cursory and, while they evidence Windsor's disagreement with the outcome of the case, they do not provide a basis for finding that the judgment is void." (Doc.362-Pg.18;Doc.390-Pg.10:27-28,Pg.11:1-5.)

This is another bizarre claim by Judge Evans because Windsor provided extensive evidence. See the lists on pages 28,29, 44, and 60 and in Exhibits 8 and 22 to Doc.377.

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[8] To ensure that everything needed to prove all of Windsor's claims was in the record under oath, Windsor has taken a most unconventional step. He subsequently filed Dec #25 – a 3,528-page 11,055-paragraph 2000+ exhibit affidavit sworn under penalty of perjury before a notary. (Doc.462.)

Windsor submits that the fact that Judge Evans said these allegations were "cursory" is excellent proof of bias by Judge Evans.

Under Rule 60(b)(4), a court may relieve a party from a final judgment if the judgment is void. "Generally, a judgment is void ... if it acted in a manner inconsistent with due process of law." (***Burke***, supra, 252 F.3d at 1263.)

Windsor was denied the basic legal rights that he is supposedly guaranteed by the law of the land. There was no fundamental fairness in this case, and Judge Evans was not the least bit impartial. (Doc.385-Dec#6:¶60-63.)

The SJ was improperly issued and should be void because (a) there was an oral contract or at least a fact issue, (b) tortious interference fails as there were no damages, (c) sale of Maid tickets by A&W was legal under the First Sale Doctrine and O.C.G.A.43-4B, (d) the SJ Order contains as many as 200 false statements, and (e) Maid, Maid attorneys, and Judge Evans were extremely dishonest, and other factors. (See Appeal Briefs – Appeal_No._07-14214-BB and 07-14235-BB.)

SJ is inappropriate where the record, examined in the light most favorable to the party opposing the motion shows any material facts in dispute. (***Adickes v. S.H. Kress & Co.***, 90 S.Ct at 1609.)

The failure to allow Windsor the time allowed by law to reply to responses to his motions may also be considered violation of due process. (See H. on page 67.)

5. **Rule 60(b)(5) is valid because the injunction violates O.C.G.A.43-4B and the First Sale Doctrine.**

This should be reviewed de novo.

"[a]n error of law constitutes an abuse of discretion." (***Wexler v. Lepore***, 385 F.3d 1336, 1338 (11th Cir. 2004).)

The Final Judgment in this case includes an injunction that was an error of law. Rule 60(b)(5) authorizes a court to grant relief from final judgment if applying it prospectively is no longer equitable. (***Rufo* v. *Inmates of Suffolk County Jail***, 502 U. S. 367, 384 (1992).)

There were clearly erroneous factual findings, erroneous legal findings, and a manifest injustice. (Doc.362-Dec#1:¶63.) (Doc.377-Amended_Dec#3:Exhs.8,22,23,24,25,26,27,28.)

A&W have the legal right to sell tickets obtained from lawful sources. (Doc.362-Dec#1:¶¶64-70.) (Doc.385-Dec#6:¶¶65-68.)

The "first sale doctrine" applies. (See Doc.362,Exh.15: ***Citizens of Humanity, LLC vs. Costco Wholesale Corporation*** in the Court of

Appeals of the State of California Second Appellate District Division Three No. B204117 (2/11/2009).) (Doc.362-Dec#1:¶¶67-70; Doc.385-Dec#6:¶¶65-68.) The "first sale doctrine" provides:

> When a manufacturer (**MAID**) parts with his goods (**TICKETS**), and they go upon the market, any third person (**A&W**) has the right to purchase and sell them as he pleases, without the consent of the manufacturer; and the courts will not aid the manufacturer, under the guise of protecting his trade-mark or the suppression of unfair competition (***Gorham Mfg. Co. v. Emery-Bird-Thayer Dry-Goods Co.*** (W.D. Mo. 1899) 92 F. 774,779, affd. (8th Cir. 1900) 104 F. 243; ***Citizens of Humanity, LLC vs. Costco Wholesale Corporation,*** supra.)

Furthermore, O.C.G.A.43-4B provides that licensed ticket brokers, such as Windsor and Alcatraz, are licensed to sell tickets that they lawfully obtain without any permission of any type from the originator of the tickets. (Doc.385-Dec#6:¶67.) The State legislature established this licensing system, and the Georgia Athletic and Entertainment Commission confirms A&W's right to sell any tickets lawfully obtained. (Doc.378-Dec#5:¶¶8921,8924,8928;Doc.377-Amended_Dec#3,Exh.22;Doc.462-Dec#25:¶¶1252,1970,2274,7907,8891.)

Judge Evans made an error of law. Proper application of the law would have changed the outcome of this case. The injunction is not

prospectively equitable, and there was no tortious interference with Maid in 2006, because Alcatraz was merely doing what it is allowed to do under the First Sale Doctrine and then as a ticket broker licensed by the State of Georgia. (Doc.385-Dec#6:¶68.)

6. **Rule 60(b)(6) is valid because of exceptional circumstances and fraud upon the court.**

"Exceptional circumstances" is vitally important in this likely unprecedented case of fraud upon the court. (Doc.362.)

The Appealed Order says: "As Windsor here has raised his claims under Rule 60(b)(1)-(5), Windsor has no recourse under Rule 60(b)(6)." (Doc.390-Pg.11.)

This is incorrect. Many Rule 60 cases have allowed multiple sections of Rule 60 to be considered including 60(b)(6).

> "If relief is denied under 60(b)(1), then Plaintiff still has an avenue of attack under 60(b)(6)." (***Pioneer Invest. Servs. Co. v. Brunswick Assoc. Ltd. Partnership***, 507 U.S. 380, 393 (1993)*;* ***Liljeberg v. Health Servs. Acquisition Corp.***, 486 U.S. 847, 864 (U.S. 1988); ***Klapprott v. United States***, 335 U.S. 601, 613 (1949).)

So, ***Pioneer*** says the court may choose (1) or (6), but not both.

The purpose of Rule 60 is to make it possible for judicial errors to be corrected. Rule 60(b)(6)'s provision for "exceptional circumstances" provides a different basis than (1)-(5).

> "By its terms, Rule 60(b)(3) deals with 'fraud . . ., misrepresentation, or misconduct *by an adverse party*, 'while the savings clause to Rule 60(b)(6) recognizes 'the power of a court to entertain an independent action to relieve a party from a judgment . . . for fraud upon the court.' (***Wilkin v. Sunbeam***, 466 F.2d 714, 717 (10th Cir.1972) (recognizing 'Rule 60(b) does not limit a court's power to redress fraud on the court.'" ***Zurich v. Matrix***, supra at 1288-1289).)

Another problem with Judge Evans' position on 60(b)(6) is that she stated Windsor's claims did not have merit under the other five categories. (Doc.390-Pg.9.) Lawyers.com defines merit as "legal significance, standing, or worth."

If claims do not have "legal standing" under (1)-(5), and Judge Evans is correct, then 60(b)(6) must be given consideration as the only available section.

Rule 60(b)(6) permits claims for "exceptional circumstances" and is the only section that encompasses fraud upon the court. Windsor did plead exceptional circumstances and fraud upon the court through an unconscionable scheme by officers of the court. (***Simon v. Nauvon***, (1st Cir. 1997).) (Doc.362-Dec#1:Pgs.52,72-73,89;Doc.381-

Dec#7:¶172;Doc.377-Amended_Dec#3:¶16;Doc.378-Dec#5:¶¶540,6071.)

> "In simple English," Rule 60(b) vests power in courts "adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." (***Klaprott v. United States***, *335 U.S. 601, 615, 69 S.Ct. 384, 390 (1949)*; ***Crapp v. City of Miami Beach***, 242 F.3d 1017, 1020 (11th Cir. 2001); ***Rice v. Ford Motor Co.***, 88 F.3d 914, 919 (11th Cir. 1996).)

The whole point of Windsor's Motion to Reopen is that the totality of the lies, false sworn pleadings, Rule 11 and Rule 34/37 violations, and errors by Judge Evans provide an exceptional circumstance so severe that justice demands that the case be reopened. This is far more than garden variety fraud. (***Simon v. Nauvon***, supra.) (Doc.385-Dec#6:¶8.)

The proof of the lies/perjury is detailed in Doc.377, Amended Dec#3, Exhibits #1-15. (Doc.385-Dec#6:¶9.) (Brief,Pgs.10-20.)

Windsor asked the DC to consider every point raised in the Motion to Reopen, Motion to Recuse, and Declarations as the basis for granting relief under Rule 60(b) or the Court's inherent powers. (Doc.385-Dec#6:¶12.)

In the Appealed Order, Judge Evans did not address why the motion would not qualify as an "exceptional circumstance," and Maid provided no

affidavits to support the false assertions of Maid's Attorneys. (Doc.385-Dec#6:¶70,Exh.1.)

A&W entered into a Consent Final Order and Judgment. (Doc.354). That decision was made BASED UPON FEAR that Judge Evans would award much greater attorneys' fees. Settlement was reached in an effort to minimize the financial exposure as the Eleventh Circuit mediator proposed. (Doc.385-Dec#6:¶78.) A&W did not provide a release. [R.354,Pg.4.]

Case law establishes that a party has the right to file a Rule 60(b) motion after entering into a consent judgment. (Doc.385-Dec#6:¶79.) (***Burke v. Smith***, supra.)

Windsor's motions and declarations as regards the contract, tortious interference, perjury, and false pleadings have shown a meritorious claim -- detailed with evidence and declarations that establish that there was a binding oral contract and there was no valid claim for tortious interference. (Doc.361-Dec#4-especially-Exhs.24,25.) (Doc.377-Amended_Dec#3-especially-Exhs.24,25,9,22.) (Doc.385-Dec#6:¶¶80-81.)

There are certainly exceptional circumstances in this case. Judge Evans' actions prevented A&W from being able to handle this lawsuit as they needed while dealing with dishonest Maid and Maid attorneys. This is an unusual and extreme situation where principles of equity *mandate* relief. (Doc.362-Dec#1:¶72-73;Doc.377-Amended_Dec#3;Doc.362-

Dec#1;Doc.361-Dec#2;Doc.362-Dec#4;Doc.378-Dec#5;Doc.385-Dec#6.)

> Some courts have held that attorney error comes within the scope of 60(b)(6) even though it may not constitute "excusable neglect" under 60(b)(1). (***L.P. Steuart, Inc. v. Matthews***, 329 F.2d 234, 235, 236 (D.C.Cir. 1964), cert. denied, 379 U.S. 824, 85 S.Ct. 50, 13 L.Ed.2d 35 (1964).)
>
> Windsor argues that gross neglect of Mr. Raley is a valid claim under 60(b)(6). The failure to file the Bazzo Deposition was devastating. (See Brief,Pgs.36-39.)

Mr. Raley made many other errors. He failed to inform the Court of the importance of documents that were in the record. The record before the court shows that Maid had $10,000 in prepayments from Alcatraz that would have defeated the Tortious Interference claim, the only claim of Maid. (Doc.362-Dec#1:¶37;Doc.251-Pg.31)

Mr. Raley failed to file declarations of Alcatraz employees. These declarations provide important evidence on various aspects of this case. (Doc.362-Dec#4:¶38-43,Exhs.1-10.) Mr. Raley failed to file Amended Dec#3 and the 28 exhibits thereto; this information was in Mr. Raley's hands prior to summary judgment filings. (Docket.)

Mr. Raley failed to file the declarations of 762 Alcatraz Media customers. These declarations prove that the complaints alleged by Maid did not take place. (Doc.368;Doc.362-Dec#1:¶44-46.) Maid was

unable to obtain a single affidavit from a customer claiming a complaint prior to the breach by Maid. (Doc.362-Dec#1:¶45)

Mr. Raley failed to ever properly raise the issue of false statements, perjury, Rule 11 violations, and other abuse. The U.S.C.A. was unaware of this on appeal despite A&W's absolute insistence in writing that Mr. Raley and Mr. Penland make this a key point in the appeal.

Due to fraud upon the courts, this case has been a grave miscarriage of justice and this also qualifies as a Rule 60(b)(6) action. (***Rozier v. Ford Motor Co.***, 573 F.2d 1332, 1338 (5th Cir. 1978).)

60(b(1)-(5) do not encompass gross neglect, fraud upon the court, or extraordinary circumstances. The extent of the fraud upon the court is massive. (Brief, Pgs.10-20.)

> "Courts . . . must apply subsection (b)(6) only as a means to achieve substantial justice when something more than one of the grounds contained in Rule 60(b)'s first five clauses is present." (***Olle v. Henry & Wright***, 910 F.2d 357, 365 (6th Cir. 1990) (internal quotation marks omitted).) "The 'something more' . . . must include unusual and extreme situations where principles of equity *mandate* relief." *Id.*
>
> "...the Supreme Court has established that relief should only be granted in "extraordinary circumstances." (***Liljeberg v. Health Services Acquisition Corp.***, 486 U.S. 847, 864 (1988).)

> The purpose of a Rule 60(b) motion is to permit the district court to reconsider matters so as to correct errors *or injustices*. ***Carter By and Through Carter v. United States***, 780 F.2d 925, 927 (11th Cir. 1986). The Eleventh Circuit has held that a Rule 60(b)(6) movant must persuade the court that the circumstances raised in a motion are sufficiently "extraordinary" to warrant such relief and whether to grant the requested relief is a matter for the district court's sound discretion. ***Toole v. Baxter Healthcare Corp.***, 235 F.3d 1307, 1317 (11th Cir. 2000). The Court of Appeals has characterized this umbrella provision as a "grand reservoir of equitable power to do justice in a particular case when relief is not warranted by the preceding clauses." ***United States v. Certain Real Prop. Located at Route 1***, 126 F.3d 1314, 1318 (11th Cir. 1997).

Judgment was obtained by Maid due to fraud, misrepresentation, and misconduct. This conduct prevented A&W from being able to fully and fairly present their case. *(**Toledo Scales Co. v. Computing Scale Co.***, 261 U.S. 399, 421, 43 S.Ct. 458, 464, 67 L.Ed. 719 (1923).) There was no trial.

Judge Evans' judgment was tainted by fraud, misconduct, and misrepresentation. (Doc.362-Dec#1:¶¶48-58,Dec#6:¶¶45-58.) The judgment was unfairly obtained.

Judge Evans wrongly ignored the fraud allegations and did absolutely nothing about it. (Doc.385-Dec#6:¶58.)

Maid's attorneys participated knowingly in these wrongs and suborned perjury. (Doc.362-Dec#1:¶57.) Judge Evans ignored the lies, perjury, and false sworn pleadings. (Doc.174-Pgs.34,45-47,23-25,27-28.) Judge Evans was biased and made improper rulings on many issues. (Doc.385-Dec#6:¶46.)

Maid and Maid's Attorneys have not denied under oath under penalty of perjury before a notary that Maid's Attorneys engaged in unethical conduct, though given ample opportunity. (Doc.385-Dec#6:¶47.)

Have the courts ever had a case where the false statements topped 1,000? Where the judge made as many as 200 false statements in orders and invented facts? Where the attorneys committed so much wrongdoing? There could not be more extraordinary circumstances than this case.

D. THE DISTRICT COURT ERRED BY FAILING TO RECUSE.

The standard of review should be de novo.

1. **The District Court failed to properly consider the motion for recusal under 28 U.S.C. 144 and 28 U.S.C. 455.**

A court must pass on the legal sufficiency of an affidavit, (***Wolfson v. Palmieri***, 396 F.2d 121, 122 (2d Cir. 1968)), and all factual allegations must be taken as true (***Berger v. United States***, 255 U.S. 22, 30 (1921), 41 S.Ct. 230, 65 L.Ed. 481 (1921).)

Judge Evans did not consider if the motion (Doc.361) was procedurally sufficient or substantively sufficient, did not grant the motion, and failed to have another judge designated.

> "Whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein, but another judge shall be designated...." "...the tribunals of the country shall not only be impartial in the controversies submitted to them, but shall give assurance that they are impartial, free, to use the words of the section, from any 'bias or prejudice' that might disturb the normal course of impartial judgment. And to accomplish this end, the section withdraws from the presiding judge a decision upon the truth of the matters alleged. Its explicit declaration is that, upon the making and filing of the affidavit, the judge against whom it is directed shall proceed no further therein, but another judge shall be designated.... The remedy by appeal is inadequate. It comes after the trial, and, if prejudice exist, it has worked

> its evil and a judgment of it in a reviewing tribunal is precarious." (***Berger v. United States***, supra at 27, 35-36.)

Judge Evans claimed there was no "proceeding."

> Both recusal statutes require a "proceeding" pending before the judge sought to be recused. 28 U.S.C. §§ 144, 455. The term "proceeding" implies "the judge's participation in decisions affecting the substantive rights of the litigants to an actual case or controversy." (***United States v. Sciarra***, 851 F.2d 621, 635 (3d Cir. 1988).)

In this case, a new proceeding was created when Windsor simultaneously filed the Motion to Reopen and the Motion to Recuse. (See ***United States v. Day***, 215 F. App'x 975 (11th Cir. 2007).)

2. **The District Court erred by claiming Windsor did not enumerate meritorious reasons for a reasonable person to doubt the impartiality of Judge Evans.**

This should be reviewed as plain error.

The Appealed Order says: "Windsor's affidavit gives no foundation for this contention other than that he felt that Judge Evans' rulings are unfair." (Doc.390-Pg.5,Footnote-2.)

This is simply blatantly false. Windsor has shown pervasive bias and dishonesty by Judge

Evans, including approximately 200 false statements in the PI Order and SJ Order, withholding evidence, obstruction of justice, fraud upon the courts, and violations of due process.

Dec#2 (Doc.361) provides 94 pages and 361 paragraphs of meritorious reasons. Amended Dec#3 (Doc.377) contains 28 exhibits with 2,410 pages of sworn testimony that are detailed analysis with citations showing that Judge Evans made as many as 200 false statements in the PI Order and SJ Order. Dec#6 (Doc.385) provides a long list of reasons.

The Motion to Recuse listed 13 categories of reasons. (Doc.361-Dec#2:¶¶9-91.)

The hopeless bias of Judge Evans is demonstrated by such outlandish statements.

3. **The District Court erred by claiming that bias must be extra-judicial.**

This should be reviewed de novo.

The Appealed Order says: "The only extra-judicial bias that Windsor cites in his motion is his belief that Judge Evans discriminated against Windsor because he is male and he is pro se." (Doc.390:Pg.5,Footnote-2.)

Judge Evans clearly discriminated against Windsor as a pro se party. She would not even allow

Windsor to take a 30(b)(6) deposition. (Doc.174-Pg.59.)

Maid attorneys defamed Windsor every chance they got with a malicious claim that Windsor called Berry a "bitch." Judge Evans didn't like the idea that a male would say such a thing. She ignored the evidence that he did not. (Doc.378-Dec#5:Pgs.477,478-¶¶2631-2644.)

The source of the impartiality of the court need not stem from an extra-judicial source:

> A favorable or unfavorable predisposition can also deserve to be characterized as "bias" or "prejudice" because, even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment. (***Liteky v. United States***, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994), at 551 and 554; ***Berger v. United States***, 255 U.S. 22, 31, 41 S.Ct. 230, 232, 65 L.Ed. 481 (1921).)

> ***Action, Accountability, and the Judiciary -- United States Federal Judicial Recusal Reform In a New Century*** by Brian Downing (2001) discusses the "extra-judicial" concept and explains that it was a mistake. At http://www.halt.org/reform_projects/judicial_integrity/pdf/History_of_Judicial_Recusal.pdf, Mr. Downing explains how ***Liteky v. U.S.*** represents the Supreme Court's stance on disqualification today.

Extra-judicial is an unfair requirement. Since Judge Evans has not revealed the source of her bias, Windsor submits that it is a violation of his Constitutional rights to be denied the ability to question Judge Evans to attempt to determine the source for the bias. Absent that, extra-judicial should not be considered. To do so seems like convicting someone of a crime without allowing them to cross-examine the witnesses. (Doc.381-Dec.#7:¶4.)

4. **The District Court erred by claiming that recusal and consideration of motions by another judge would ultimately make no difference as to the outcome.** (Doc.390-Pg.5.)

This may be reviewed under an abuse of discretion standard.

The only valid consideration under the law is whether a reasonable person might doubt the judge's impartiality.

Judge Evans has no idea how another judge would view the evidence and act, and it is irrelevant. Windsor's testimony is the only evidence before Judge Evans, and Windsor says that A&W will be meritorious.

5. **The District Court erred because the impartiality of the judge might reasonably be questioned.**

This should be reviewed de novo.

Judge Evans failed to apply the proper standard.

> *McWhorter v. City of Birmingham*, 906 F.2d 674, 678 (11th Cir. 1990), held that the standard under section 455 (a) is an objective one: "The test is whether an objective, disinterested, lay observer, fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality."

Windsor contends that the average reasonable person, knowing all the facts, would entertain doubt about the judge's impartiality.

Windsor's declarations state very clearly the facts and reasons for the belief that bias and prejudice exists. Dates, times, places, circumstances, and statements are itemized in Dec#2 (Doc.361) and Dec#7 (Doc.381). In Dec#2, ¶¶9-12 discuss withholding of documents; ¶¶13-28 discuss that Judge Evans made fact decisions in a jury trial case; ¶¶29-36 discuss that Judge Evans established a fixed view about pending trial matters; ¶¶37-49 discuss the discovery denied by Judge Evans; ¶¶50-54 discuss that Judge Evans did not allow A&W to depose witnesses; ¶¶55-56 discuss that Judge Evans ignored lies, perjury, false sworn pleadings, false statements of fact, and Rule 11 violations in the hundreds by Maid; ¶¶57-67 discuss that Judge Evans favored Maid in all rulings; ¶¶68-70 discuss that Judge Evans considered testimony that was not to be considered; ¶¶71-83 discuss that

Judge Evans distorted the facts and the law to make rulings in favor of Maid; ¶¶84-85 discuss that Judge Evans demonstrated bias and prejudice against Windsor, a pro se party and a male; ¶¶86-88 discuss that Judge Evans improperly considered hearsay as evidence; ¶¶89-91 discuss that Judge Evans failed to provide due process and equal protection to the Defendants; ¶92 discusses that Judge Evans will be a witness in this matter, and a Judicial Misconduct Complaint is pending against her regarding this case. See Doc.406 and Doc.470.

The Supreme Court said in ***Liteky v. US***, supra, "this is not a subjective test, but rather an objective one." (***Liljeberg v. Health Services Acquisition Corp.***, 486 U.S. 847, 871, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988).)

6. **The District Court erred by failing to consider that the cumulative effect of the facts presented would be grounds for recusal.**

This should be reviewed de novo.

This is a case of pervasive bias. Judge Evans established a position that A&W were wrong and that their case didn't matter. (Doc.381-Dec#7:Pgs.13-14) When all of the evidence is considered, this is absolutely a case for recusal.

> Where a number of facts considered separately would not be grounds for recusal, the cumulative effect of those facts considered together may be a basis for recusal. (See ***In re***

United States of America, 441 F.3d at 68; *United States v. Mavroules*, 798 F. Supp 61, 65 (D. Mass. 1992).)

7. <u>The District Court erred by improper consideration of recusal under 28 U.S.C. 144.</u>

This should be reviewed de novo.

Requirement #1: The affidavit in support must state the facts and the reasons for the belief that bias and prejudice exist. The reasons for the belief must be material and stated with particularity. Windsor met this requirement.

> Properly pleaded facts in a § 144 affidavit must be considered as true. (***Christo v. Padgett***, 223 F.3d 1324, 1328, 1329 (11th Cir. 2000).)

> If the judge to whom a timely motion is directed determines that the accompanying affidavit specifically alleges facts stating grounds for recusal under section 144, the legal sufficiency of the affidavit has been established, and the motion must be referred to another judge for a determination of its merits. (***United States v. Azhocar***, 581 F.2d 735, 738-40 (9th Cir. 1978), cert. denied, 440 U.S. 907, 99 S.Ct. 1213, 59 L.Ed.2d 454 (1979) at 738.)

Requirement #2: A motion for recusal "shall be filed not less than ten days before the beginning of the term (session) at which the proceeding is to be heard. With the abolition of terms of court in 1963, this specific provision no longer applies. However, courts have held that a section 144 motion must be filed with reasonable promptness after the party learns of the facts that may call into question the judge's impartiality." (***Recusal: Analysis of Case Law under U.S.C. §455 and 144***, Page 50, Federal Judicial Center, 2002.)

> "...the statute says nothing about what the timeliness requirement means where, as in this case, the recusal motion rests on events occurring after proceedings began. In such circumstances, some courts have required the affidavit to be filed 'at the earliest moment.'" (e.g., ***U.S. v. Sykes***, 7 F.3d 1331 at 1339 (7th Circ. 1993)(citations omitted); ***James v. District of Columbia***, 191 F. Supp. 2d 44, 47 (D.D.C. 2002) (quoting ***Sykes***, supra at 1339)." (***SEC v. Loving Spirit***, No. 03-5234 (DC Cir. 2004).)

In April 2009, upon obtaining the contracts that Judge Evans withheld, Windsor finally had independent documentary proof of the bias. The Motion to Recuse was filed as soon as possible thereafter on April 24, 2009 simultaneously with a Motion to Reopen that established a new "proceeding" on day one of the "session" at which the proceeding was to be heard. (Doc.361;Doc.362.)

Requirement #3: The affidavit of prejudice is to be accompanied by a certificate of counsel of record stating that it is made in good faith and attesting to the truthfulness and accuracy. The only person of record is Windsor. Counsel of Record withdrew. (Doc.360;Doc.372;Doc.379.) The allegations of the certified affidavit must be accepted as true, and Judge Evans must act in accordance with the mandate of 28 U.S.C. 144 and recuse herself. (***U.S. v. Sykes***, supra at 1339.)

> The allegations in a section 144 affidavit must be "material and stated with particularity" and be such that "they would convince a reasonable person that a bias exists."
>
> (***United States v. Alabama***, 828 F.2d 1532, 1540 (11th Cir. 1987), *cert.denied*, 487 U.S. 1210 (1988).)

Windsor has stated material allegations with particularity as required by 28 U.S.C. 144.

> "It is the duty of the judge against whom a Section 144 affidavit is filed to pass upon the legal sufficiency of the facts alleged, but neither the truth of the allegations nor the good faith of the pleader may be questioned. Section 144 withdraws from the presiding judge a decision upon the truth of the matters alleged." (***Berger v. United States***, 255 U.S. 22, 36, 41 S.Ct. 230, 234, 65 L.Ed.481).)

8. **The District Court erred by claiming that a pro se party was required to file a certificate of "counsel of record."**

This should be reviewed de novo.

The Appealed Order says: "Windsor has failed to file any certificate of counsel of record." (Doc.390-Pg.6:15-16.)

Windsor is pro se, so there is no "counsel of record." Windsor was unable to obtain an attorney to represent him over fear of retribution for taking action against a federal judge. (Doc.381-Dec#7:¶5.) Windsor asked every attorney he knows in Atlanta to see if they would provide a certificate, as well as the Legal Aid Society and the ACLU. Each attorney was either unwilling due to concerns of retribution, had conflicts, or were unavailable. (Dec#1-Doc.362);Dec#2-Doc.361;Amended_Dec#3-Doc.377;Dec#4-Doc.362;Dec#5-Doc.378;Dec#6-Doc.385;Dec#7-Doc.381) were sworn under penalty of perjury before a notary.

Windsor did provide a certification of good faith. Windsor stated in a Declaration #1 (Doc.362) filed on April 24, 2009: "I hereby state that my motions and declarations are made in good faith. James W. Penland has filed a motion to withdraw as my counsel." This was signed "William M. Windsor, Pro Se." (Doc.362-Dec#1:¶75.)

Windsor argues that if the sworn motion and affidavit are not sufficient, the law should be modified or extended to reflect that pro se parties do

not have to submit a certificate from "counsel of record," since there is no such thing. History shows that the purpose of such a requirement was to ensure that the party, not the attorney, wanted to seek recusal. This does not apply with a pro se motion. It would be a violation of Windsor's legal and Constitutional rights to require that to qualify for protection under a statute, he has to meet an unnecessary requirement that infringes on his pro se rights that has proven impossible to meet despite best efforts.

E. THE DISTRICT COURT ERRED BY FAILING TO CONSIDER WINDSOR'S CONSTITUTIONAL JUSTIFICATION FOR RECUSAL.

This should be reviewed under the plain error standard.

Windsor is entitled, under the Constitution and its amendments, the decisions of the U.S. Supreme Court and other federal courts of appeal, and the laws of Congress, to an impartial and fair judge at all stages of the proceeding.

Judge Evans has violated Windsor's civil and constitutional rights guaranteed in the First, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments to the U.S. Constitution under color of law.

The Due Process Clause serves two purposes...One is to produce, through the use of fair procedures to prevent the wrongful deprivation of interests; ...the other is a guarantee of basic

fairness, i.e.: to make people feel that they have been treated fairly.

> "(t)rial before an 'unbiased judge' is essential to due process." (***Johnson v. Mississippi***, 403 U.S. 212, 216 (1971).)

> "justice must give the appearance of justice" (***Offutt v. United States***, 348 U.S. 11, 14, 75 S. Ct. 11, 13 (1954).)

Judge Evans has effectively denied Windsor's rights of equal protection under the law under Article VI of the Constitution. (Doc.361-Dec#2:¶ ¶88-90.)

> "even if there is no showing of actual bias", "due process is denied by circumstances that create the likelihood or the appearance of bias." (***Peters v. Kiff***, 407, U.S. 493, 502 (1972).)

F. THE DISTRICT COURT ERRED BY FAILING TO CONSIDER WINDSOR'S MOTION TO REOPEN UNDER THE COURT'S INHERENT POWERS.

This should be reviewed de novo.

Windsor filed the Motion to Reopen under Rule 60(b) and the Court's inherent powers. (***Bronson v. Schulten***, 104 U.S. (14 Otto) 410, 417 (1881).) (Doc.385-Dec#6:¶6.)

Judge Evans failed to address inherent powers.

G. THE DISTRICT COURT ERRED BY CLAIMING THAT WINDSOR'S RULE 11 MOTION FOR SANCTIONS WAS ENTIRELY LACKING IN MERIT.

This should be reviewed under the plain error standard.

The Appealed Order says: "Windsor's motion is entirely lacking in substantive merit." (Doc.390-Pg.13:20.) (See Doc.363-Doc.364.)

This is another bizarre finding. As listed above on pages 28, 29, 44, and 60, Windsor provided hundreds of pages of evidence of wrongdoing, and it was not controverted! (Doc.363; Doc.364.)

H. THE DISTRICT COURT ERRED BY FAILING TO GIVE WINDSOR HIS LEGAL RIGHT TO FILE A REPLY TO RESPONSES.

This should be reviewed de novo.

Maid filed its Responses to Windsor's Motions for Sanctions (Doc.370;Doc.371) on May 14, 2009. LR 7.1C, NDGa provides 10 days for Windsor to file a Reply. Windsor was denied that right. Judge Evans issued the Appealed Order on May 22, 2009 before Windsor could reply on the Motions for

Sanctions and before Windsor's Reply on Motion to Reopen could be considered. (Doc.390).

I. THE DISTRICT COURT ERRED BY FAILING TO CONSIDER THAT THIS CASE CASTS DOUBT ON THE INTEGRITY OF THE JUDICIAL PROCESS.

This should be reviewed under the plain error standard.

As the ***U.S. v Microsoft*** decision noted, after quoting ***Liljeberg v. Health Servs. Acquisition Corp.***, 486 U.S. 847, 865, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988):

> "...violations of the Code of Conduct may give rise to a violation of 455(a) if doubt is cast on the integrity of the judicial process." (***United States v. Microsoft Corp.***, 346 U.S. App. D.C. 330, 253 F.3d 34, 107, 114 (D.C. Cir. 2001).)

Windsor has cited hundreds of violations of the State Bar of Georgia Code of Professional Conduct as well as numerous violations of the Code of Judicial Conduct. (Doc.363;Doc.364;Doc.474.) This case casts SERIOUS doubt on the integrity of the judicial process, and this should have been a recusal consideration.

VI. RELIEF SOUGHT

The Appellant seeks to have the Order of May 22, 2009 (Doc.390) vacated.

The Appellant seeks to have this Court exercise its review and supervisory powers to take appropriate action to address this grave miscarriage of justice.

The Appellant seeks an order vacating all orders issued by Judge Evans since May 22, 2009.

The Appellant seeks an order declaring the Motion for Discovery is not moot.

The Appellant seeks remand with instructions that the case be assigned to a new district judge (other than Judge Duffey) for resolution of the pending motions and possible further proceedings. Judge Duffey has established bias for Windsor; he called him "scurrilous and irresponsible" in another matter for having the audacity to attempt to depose Judge Evans.

The Appellant seeks an order declaring that the case should be reopened.

The Appellant seeks an order declaring that Maid and Maid's Attorneys demonstrated extreme bad faith during the course of the litigation.

The Appellant seeks an order declaring that the District Court has rested its conclusion on clearly erroneous factual findings.

The Appellant seeks an order declaring that Windsor's accusations of perjury, false sworn pleadings, and Rule 11 violations were never given proper consideration by Judge Evans.

The Appellant seeks an order declaring that Judge Evans was at fault for doing absolutely nothing about the claim Windsor made that Maid's attorneys had repeatedly filed false sworn pleadings, false pleadings, and violated Rule 11.

The Appellant seeks an order declaring that Judge Evans made various alleged fact statements in the Appealed Order, but these statements are not supported by any evidence or citations and must not be considered.

The Appellant seeks an order declaring that the a "legal proceeding" is defined as "any and all actions that are authorized or sanctioned by law and instituted in a court or a tribunal for the acquisition of rights or the enforcement of remedies." 60(b) motions are actions authorized by law and instituted in the court where a party seeks to acquire a right, and therefore are a proceeding.

The Appellant seeks an order declaring that when a Final Order and Judgment is issued in a case, the one-year limitation on Rule 60(b)(1)-(2)-(3) begins on that date, not the date of previous orders and judgments.

The Appellant seeks an order declaring that attorney error may be considered excusable neglect

as to a party when the party shows diligence and good faith, and the failure to timely perform a duty was due to circumstances that were beyond the party's reasonable control.

The Appellant seeks an order declaring that serious errors by a judge will qualify for relief under Rule 60(b)(1).

The Appellant seeks an order declaring that if a judge withholds documents after an in camera inspection, and it is later shown that those documents would have been key evidence in a case, Rule 60(b)(2) may be used to obtain relief.

The Appellant seeks an order declaring that fraud qualifies Windsor for relief under Rule 60(b)(3).

The Appellant seeks an order declaring that fraud upon the court does qualify Windsor for relief under Rule 60(b)(6) as 60(b)(3) does not apply to fraud upon the court.

The Appellant seeks an order declaring that under Rule 60(b)(4), a court may relieve a party from a final judgment if significant violations of the party's Constitutional rights are shown.

The Appellant seeks an order declaring that Georgia Law O.C.G.A. 43-4B provides that licensed ticket brokers are licensed under Georgia law to sell tickets that they lawfully obtain without any permission of any type from the originator of the tickets.

The Appellant seeks an order declaring that the "First Sale Doctrine" gives anyone (including eBayers, flea marketers, garage salers, resale shops, classified advertisers, ticket sellers, and others) the right to sell a product obtained legally while using the name of that product without liability for trademark infringement.

The Appellant seeks an order declaring that when a trial judge in a case pending in that court is presented with a motion to recuse accompanied by an affidavit, the judge's duty will be limited to passing upon the legal sufficiency of the affidavit, and if the assumption that all the facts alleged in the affidavit are true and warrants recusal, then another judge must be assigned to hear the motion to recuse.

The Appellant seeks an order declaring that the District Court showed pervasive bias and dishonesty, including many false statements in orders.

The Appellant seeks an order declaring that Windsor has provided evidence that seems to indicate that Maid, Maid attorneys, Glynn, Ruddy, Schul, Carlson, and Berry committed perjury.

The Appellant seeks an order declaring that Windsor has provided evidence that seems to indicate that Maid attorneys have suborned perjury.

The Appellant seeks an order declaring that a showing of extra-judicial bias is not required in recusal actions.

The Appellant seeks an order declaring that where a number of facts considered separately would not be grounds for recusal, the cumulative effect of those facts considered together may be a basis for recusal.

The Appellant seeks an order declaring that in 28 U.S.C. 144 actions, the affidavit of prejudice from a pro se party does not require a "certificate of counsel" of record stating that it is made in good faith and attesting to the truthfulness and accuracy. The pro se party may make this certification of good faith.

The Appellant seeks an order declaring that LR 7.1C, NDGa provides 10 days for a party to file a Reply to a Response to a motion. Litigants must be given that right. If the District Court issues an order without allowing time for the Reply, the order is void.

The Appellant seeks an order to be published that addresses each of the findings cited above.

The Appellant seeks an order providing any other relief that this Court feels is proper.

Windsor was shocked when the U.S.C.A. denied A&W's appeals of the SJ. Alcatraz cited six primary errors with 13 subsidiary errors. Windsor cited an additional 10 errors. The U.S.C.A. did not

address the points of error, and the ruling makes absolutely no sense to Windsor. Please do not let this happen again.

Windsor has been doing everything possible in an effort to get a hearing at which Maid's managers can be called to testify. Judge Evans and Judge Duffey have refused every request. If these people are put on the witness stand, the truth will come out, and Windsor will be able to end this nightmare. Justice is just a hearing away.

For the foregoing reasons, Windsor respectfully requests that this Court vacate and reverse the Appealed Order of May 22, 2009 on the grounds enumerated herein.

Respectfully submitted, this 17th day of August, 2009.

William M. Windsor

/s_____

William M. Windsor
Pro Se

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Fed.R.App.P. 32(a)(7)(B) because:

__x__ this brief contains 13,979 words, excluding the parts of the brief exempted by Fed.R.App.P. 32(a)(7)(B)(iii);

2. this brief complies with the typeface requirements of Fed.R.App.P. 32(a)(5) and the type style requirements of Fed.R.App.P. 32(a)(6) because:

__X__ this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in font size 14, Microsoft Times New Roman font.

/s_____

William M. Windsor
Pro Se

August 17, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have served the forgoing "APPELLANT BRIEF" by depositing a copy of the same in the United States mail in a properly addressed envelope with adequate prepaid postage thereon to ensure delivery to the following:

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This 17th day of August, 2009.

William M. Windsor

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APPEAL DOC.NO. 09-13086-DD

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MAID OF THE MIST CORPORATION and
MAID OF THE MIST STEAMBOAT COMPANY,
LTD., Appellees,

v.

ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA,
INC., Defendants; and WILLIAM M. WINDSOR,
Appellant and Defendant.

Appeal from the United States District Court
for the Northern District of Georgia, Atlanta
Division
Case No. 1:06-CV-00714-ODE-1
The Honorable Orinda D. Evans

MOTION FOR RECONSIDERATION

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PRO SE FOR DEFENDANT/APPELLANT,
WILLIAM M. WINDSOR

CERTIFICATE OF INTERESTED PERSONS

William M. Windsor, Pro Se, hereby certifies pursuant to FRAP 26.1 and 11th Cir. Rule 26.1-1 that the following persons, judges, associations of person, firms, partnerships, or corporations may have an interest in the outcome of this case:

- Alcatraz Media, Inc., and Alcatraz Media, LLC, Defendants (jointly "Alcatraz")
- Anderson, Judge R. Lanier, United States Appellate Judge.
- Anderson, Jr., Carl Hugo ("Mr. Anderson"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- Barkett, Judge Rosemary, United States Appellate Judge.
- Berry, Judith L. ("Berry"), customer of Alcatraz and Maid.
- Birch, Judge Stanley F., United States Appellate Judge.
- Black, Judge Susan H., United States Appellate Judge.
- Blackburn, Judge, United States District Judge.
- Bright, Sarah Louise ("Ms. Bright"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- Brown, Marc W. ("Mr. Brown"), Counsel for Appellees, Maid of the Mist Corp.

and Maid of the Mist Steamboat Company, Ltd.

- Carlson, Sandra ("Carlson"), Assistant Controller of Maid.
- Carnes, Judge Ed, United States Appellate Judge.
- Carnes, Judge, United States District Judge.
- Chambliss, Senator Saxby.
- Conway, Judge, United States District Judge.
- Cox, Judge Emmett Ripley, United States Appellate Judge.
- Dubina, Judge Joel F., United States Appellate Judge.
- Duffey, Hon. William S. ("Judge Duffey"), United States District Judge.
- Edmondson, Judge J.L., United States Appellate Judge.
- Evans, Hon. Orinda D. ("Judge Evans" or the "DC"), United States District Judge.
- Everybody Loves Travel, LLC, company owned by the owners of Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
- Fay, Judge Peter T., United States Appellate Judge.
- Federal Bureau of Investigation ("FBI").
- Fuller, Judge, United States District Judge.
- Georgia Athletic and Entertainment Commission ("GAEC").

- Glynn, Christopher ("Glynn"), President of Maid.
- Godbold, Judge John C., United States Appellate Judge.
- Granade, Judge, United States District Judge.
- Hawkins & Parnell ("H&P"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- Hill, Judge James C., United States Appellate Judge.
- Hull, Judge Frank M., United States Appellate Judge.
- Judicial Council of the Eleventh Circuit.
- Kravitch, Judge Phyllis A., United States Appellate Judge.
- Maid of the Mist Corporation ("Corporation"), Appellee, and Maid of the Mist Steamboat Company, Ltd. ("Steamboat"), Appellee, (jointly "Maid").
- Marcus, Judge Stanley, United States Appellate Judge.
- Mendell, Brett A. ("Mr. Mendell"), Former Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- Mickle, Judge, United States District Judge.
- Moore, Judge, United States District Judge.
- National Association of Ticket Brokers.

- New York State Bar Association.
- New York State Office of Parks, Recreation and Historic Preservation
- New York State Comptroller's Office
- Niagara County New York District Attorney.
- Niagara Parks Commission
- Penland, James W. ("Mr. Penland"), Former Counsel for William M. Windsor, Appellant.
- Phillips Lytle ("Phillips"), Counsel for Appellees, Maid of the Mist Corp. and Maid of the Mist Steamboat Company, Ltd.
- Pryor, Judge William H., United States Appellate Judge.
- Raley, G. Brian ("Mr. Raley"), Former Counsel for Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
- Reserve 123, Inc., a company owned by the owners of Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
- Reserve XL, Inc., a company owned by the owners of Defendants, Alcatraz Media, Inc., and Alcatraz Media LLC.
- Round America, LLC, a company owned by William M. Windsor.
- Royal, Judge, United States District Judge.
- Ruddy, Timothy P. ("Ruddy"), Vice-President of Maid.
- Russ, Arthur ("Mr. Russ"), Counsel for Appellees, Maid of the Mist Corp. and

Maid of the Mist Steamboat Company, Ltd.

- Schul, Robert J. ("Schul"), Controller of Maid.
- State Bar of Georgia.
- Sullivan, Kathleen E. ("Ms. Sullivan"), Former Counsel for Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
- Take 5 Tours, Inc., a company owned by the owners of Defendants Alcatraz Media, Inc., and Alcatraz Media, LLC.
- Tjoflat, Judge Gerald Bard, United States Appellate Judge.
- United States Attorney General.
- United States Attorney's Office.
- United States Supreme Court.
- Wilson, Judge Charles R., United States Appellate Judge.
- Windsor, William M. ("Windsor or Appellant"), Defendant and Appellant. (Defendants Alcatraz and Windsor are reflected herein as "A&W.")
- ZZ Tours, Inc., a company owned by William M. Windsor.

No corporate disclosure statement is necessary for this party because Windsor is a natural, human, person.

Respectfully submitted this 15th day of September, 2009.

William M. Windsor, Pro Se

s/_____
William M. Windsor
Pro Se

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1. Based upon the legal definition of "frivolous," this Court issued a **FRIVOLOUS ORDER** that is without merit and was apparently issued for an improper purpose. (Aff #1 - ¶11.)

2. This is a Motion for Reconsideration of this order dated September 9, 2009 ("**FRIVOLOUS ORDER**" – Exhibit A hereto) on an Appeal ("Appeal") from the order of the United States District Court, Northern District of Georgia, Civil Action Number1:06-CV-0714-ODE entered May 22, 2009 ("Appealed Order" – Exhibit B hereto). (Aff #1 - ¶12.)

3. This Court gave a one sentence response to the Appeal: "After review of the Appellant's motions below, the District Court's Order and Appellant's brief, we DISMISS this appeal AS FRIVOLOUS sua sponte. (Aff #1 - ¶13.)

4. 11th Circuit Rule 27-4 defines a frivolous motion: (Aff #1 - ¶14.)

> "A motion is frivolous if: (a) it is without legal merit and cannot be supported by a reasonable argument for an extension, modification, or reversal of existing law, or the establishment of new law; or (b) it contains assertions of material facts that are false or unsupported by the record; or (c) it is presented for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

5. Windsor has stated repeatedly under oath, under penalty of perjury, and before a notary that he has never presented any motions for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. Every motion that Windsor has filed has been supported by a sworn affidavit. (See Affidavit of William M. Windsor ("Aff #1"), attached hereto as Exhibit C and incorporated herein.) Windsor will be happy to take a polygraph test to prove this. This Court has no factual justification for claiming improper purpose (4. c. above), so this Court cannot claim this as justification for the **FRIVOLOUS ORDER**. (Aff #1 - ¶15.)

6. All material facts are fully supported by the record in Windsor's Appeal. Everything was sworn under penalty of perjury before a notary. Windsor's facts were never controverted in any manner; the Plaintiffs did not file a single affidavit. Furthermore, the Plaintiffs/Appellees did not file a brief in response to Windsor's appeal. This Court has no factual justification for claiming facts were not supported (4. b. above), so this cannot be claim as the justification for the **FRIVOLOUS ORDER**. (Aff #1 - ¶16.)

7. This means the only possible basis for the **FRIVOLOUS ORDER** is lack of legal merit (4. A. above). Windsor cited 52 cases, three treatises, one article and six amendments to the Constitution in his Appeal. An additional 31 cases are cited herein. Windsor detailed the law in his appeal, and virtually every argument was supported by case law, so this Court must have somehow become extremely

confused. Perhaps this **FRIVOLOUS ORDER** was mistakenly issued when it was intended for a different appeal. This Court is asked to review the statutes and case law cited in the Appeal (Exhibit D hereto). (Aff #1 - ¶17.)

8. Most of the case law that Windsor has found on "frivolous appeals" refers to criminal cases with pro se inmates and proceedings in forma pauperis. One such case cited regularly in Eleventh Circuit "frivolous" rulings is ***Bilal v. Driver*** (***Bilal*** order is Exhibit E – 5 page order): (Aff #1 - ¶18.)

> "A claim is frivolous if it is without arguable merit either in law of fact." ..."frivolous claims include claims "describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar." (***Neitzke v. Williams***, 109 S. Ct. 1827, 1833 (1989); ***Bilal v. Driver***, 251 F.3d 1346, 1349 (11th Cir. 2001).)[9]

> "Factual allegations are frivolous ... when they are "clearly baseless;" legal theories are frivolous when they are "indisputably meritless." (See ***Sultenfuss v. Snow***, 894 F.2d 1277, 1278 (11th Cir.1990). ***Battle v. Central State Hospital***, 898 F.2d 126, 129 (11th Cir. 1990).) (***Battle*** order is Exhibit F – 6 page order)

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[9] Newly-cited cases will be cited in full. Cases that were cited in the Appeal Brief are simply listed by name; the index of case citations from the Appeal Brief is provided for reference as Exhibit D.

9. Terry Le Battle was a mentally ill pro se criminal, but the 11th Circuit reversed an order and declared his pro se motion was not frivolous. (Aff #1 - ¶19.)

10. In a frivolous appeal involving a speeding ticket that somehow made it to the United States Supreme Court, the Court said that law student Bret Clark "demonstrates a startling ignorance of the law, and, more importantly, an unwillingness to expend even minimal effort to research facts or law...." (***Clark v. Florida***, 475 U.S. 1134, 1136 (1986) -- order is Exhibit G.) (Aff #1 - ¶20.)

11. To be deemed frivolous, a litigant's arguments must truly strike beyond the pale [outside the bounds of morality, good behavior or judgment in civilized company]. (***Washington v. Alaimo***, 934 F. Supp. 1395 (S.D. Ga. 1996).) (***Washington*** order is Exhibit H.) Convicted murdered Matthew Washington filed more than 75 "motions" considered frivolous, including a "Motion to Kiss My Ass" in which he moved "all Americans at large and one corrupt Judge Smith [to] kiss my got [sic] damn ass sorry mother fucker you." (Aff #1 - ¶21.)

12. "[W]hen a judge calls an argument 'ridiculous' or 'frivolous,' it is absolutely the worst thing the judge could say... The judge is not telling you that you were 'wrong.' The judge is telling you that you are out of your mind." (Attorney Daniel B. Evans, ***The Tax Protester FAQ***.) (Aff #1 - ¶22.)

13. Unlike Jamaal Ali ***Bilal***, Windsor is not a criminal and has never even been accused of a crime other than a traffic or parking citation. (Aff #1 - ¶23.)

14. Unlike criminal Terry Le ***Battle***, Windsor does not now have and never has had mental illness. Windsor is not out of his mind. (Aff #1 - ¶24.)

15. Unlike law student Bret ***Clark***, Windsor has spent years researching the facts and the law in this specific case. (Aff #1 - ¶25.)

16. Unlike murderer Matthew ***Washington***, Windsor has never killed anyone or asked anyone to kiss his derriere. (Aff #1 - ¶26.)

17. Windsor searched "frivolous motion" and "frivolous appeal" using VersusLaw.com. Windsor's appeal does not meet any of the criteria that the 11th Circuit expressed in 58 cases that contained those terms. (Aff #1 - ¶27.)

> "We have found claims to be frivolous where they were 'groundless [and] baseless' and predicated upon 'untruthful, outrageous, scandalous, and slanderous' allegations," ***Beard v. Annis***, 730 F.2d 741, 745 (11th Cir. 1984), or based upon "false and unsupported allegations." ***Footman v. Cheung***, 139 Fed. Appx. 144, 146 (11th Cir. 2005). Other types of frivolous claims are those unsupported by any evidence at all, ***In re Mroz***, 65 F.3d 1567,

1573, 1574-75 (11th Cir. 1995), or those having no "reasonable basis in fact." (***Barnes v. Dalton***, 158 F.3d, 1212 at 1214.)

"In the cases in which we have sustained findings of frivolity, plaintiffs have typically failed to 'introduce any evidence to support their claims.'" (***Sullivan***, 773 F.2d at 1189.) (***Cordoba v. Dillard's, Inc.***, 419 F.3d 1169, 16 A.D. Cases 1774 (11th Cir. 08/04/2005).)

18. How in the world could three judges who swore an oath to uphold the law issue this **FRIVOLOUS ORDER**? It is Windsor's hope that Judges Hull, Marcus, and Pryor must have issued this ORDER in error. (Aff #1 - ¶28.)

19. Windsor is an intelligent, well-educated, successful businessman. He isn't frivolous about anything. (See Exhibit C.) (Aff #1 - ¶29.)

20. If the **FRIVOLOUS ORDER** was not a clerical mistake, the very least that this Court must do is take each of the 25 points of error and explain just exactly how each one lacks an arguable basis in law or has factual inadequacies. This Court will be unable to do so because there is no justification for the **FRIVOLOUS ORDER**. (Aff #1 - ¶30.)

21. Windsor submits that this Court has violated his civil and Constitutional rights. This Court's cursory treatment of Windsor's Appeal does not comport with fair procedure and lacks the equality that is required by the Constitution and its amendments. Axe murderers, child molesters, and

rapists are given better treatment than Windsor. (***Younger v. Gilmore***, 404 U.S. 15 (1971); ***Cruz v. Hauck***, 404 U.S. 59 (1971); ***Chaffin v. Stynchcombe***, 412 U.S. 17, 34 n. 22 (1973).) Even the student who appealed his $100 traffic ticket to the U.S. Supreme Court received the courtesy of proper orders at both the Court of Appeals and the Supreme Court. (Aff #1 - ¶31.)

22. Windsor is entitled, under the Constitution and its amendments, the decisions of the U.S. Supreme Court and other federal courts of appeal, and the laws of Congress, to an impartial and fair judge at all stages of the proceeding. (Aff #1 - ¶32.)

23. Judge Evans violated Windsor's legal rights guaranteed in the First, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments to the U.S. Constitution under color of law. Now the Eleventh Circuit is joining in. (Aff #1 - ¶33.)

24. Windsor submits that this Court has discriminated against him because he is pro se. This Court has responded with a one sentence ruling as if Windsor was a pro se serial killer and child molester who filed outlandish motions on a daily basis from his jail cell. (Aff #1 - ¶34.)

25. There is no evidence that this Court conducted any review whatsoever. No Court should be allowed to hide behind a one sentence order claiming an appeal is frivolous without providing a detailed written justification. Such an unfair order denies Windsor the right to a fair trial. It denies the

right to a fair appeal. It denies due process. (Aff #1 - ¶35.)

26. Windsor submits that his experience is that judges in the Northern District of Georgia and the Eleventh Circuit ROUTINELY violate the law and twist the facts and the law to accomplish their own improper purposes. These judges have apparently decided that they will take the law into their own hands and do whatever they please. All of the judges that Windsor has encountered cover up for the dishonest judges and attorneys. (Aff #1 - ¶36.)

27. If this Court does not withdraw the **FRIVOLOUS ORDER**, Judges Hull, Marcus, and Pryor will be endorsing perjury, subornation of perjury, conspiracy to commit fraud upon the courts, lies, false sworn pleadings, false pleadings, discovery abuse, obstruction of justice, dishonesty of attorneys, parties, and judges. Windsor provided complete, total, undeniable proof of the massive dishonesty and bad faith. (Aff #1 - ¶37.)

28. Judges Hull, Marcus, and Pryor have an obligation under Canons 3.D.(1) and 3.D.(2) of the Code of Judicial Conduct to report Judge Evans and the Plaintiffs' attorneys for violations of the Code of Judicial Conduct and the Rules of Professional Conduct. (Aff #1 - ¶38.)

29. It is not frivolous for Windsor to claim that the District Court erred by claiming there was not any evidence that the Plaintiffs acted in bad faith in the course of the litigation and failed to have

factual support for its rulings. This is a fact issue. Windsor presented uncontroverted facts. Windsor's case law review included many findings of bad faith that were nowhere near as severe as those in this case. (***FDIC v. United Pac. Ins. Co; Zurich v. Matrix***.) (Aff #1 - ¶39.)

30. It is not frivolous for Windsor to claim that 1,905 pages of sworn testimony by Windsor, 810 exhibits, and thousands of citations to Plaintiffs' sworn testimony and other evidence showed bad faith by the Plaintiffs. Not a single statement has been controverted by the Plaintiffs/Appellees! This is a fact issue, and Windsor presented uncontroverted facts. (Aff #1 - ¶40.)

31. It is not frivolous for Windsor to claim that since there were no affidavits filed by anyone other than Windsor, it was improper for Judge Evans to cite purported facts to controvert Windsor's facts in the Appealed Order. Windsor's legal research indicates that alleged fact statements in motions must be supported by affidavits (Local Rule NDGa. 7.1A.(1). Windsor's research indicates that appeals must be based solely upon the factual record before the court. (FRAP Rule 11.) The record was provided by the District Court Clerk, and the record proves the truthfulness of every statement that Windsor has made. The record proves beyond any doubt the dishonesty of the Plaintiffs, their attorneys, and Judge Evans. This Court has no legal basis to say that these rules do not apply. (Aff #1 - ¶41.)

32. It is not frivolous for Windsor to claim the District Court erred in denying Rule 60(b) motion due to an improper interpretation of the law. Windsor's legal research indicates that Judge Evans applied the law improperly and that this is one of the factors that a movant may include in a Rule 60(b) motion. This Court has no legal basis to say Windsor's legal position was frivolous when he has read hundreds of cases that indicate the law was improperly applied by Judge Evans. (Aff #1 - ¶42.)

33. It is not frivolous for Windsor to claim the District Court erred in claiming a Rule 60(b) motion for relief from judgment is improper because "such an interpretation would inappropriately undermine the finality of judgments." Windsor's case law review included many Rule 60 cases filed for relief from judgments. "...the interest in finality is no more impaired in this situation than in any Rule 60(b) proceeding." (***Standard Oil Co. California v. United States***, 97 S. Ct. 31, 429 U.S. 17 (U.S. 10/18/1976).) (Aff #1 - ¶43.)

34. It is not frivolous for Windsor to claim that an order titled "Final Order and Judgment" should be interpreted to be a "Final Order" and/or a "Final Judgment." Windsor's case law review yielded a specific case that addressed the timeliness issue error by Judge Evans. (***Bradford v. Unum***; ***Pitney Bowes, Inc. v. Mestre***; ***Torres v. Chater***.) (Aff #1 - ¶44.)

35. It is not frivolous for Windsor to claim that Judge Evans improperly stated that a Rule 60(b) motion does not establish a proceeding.

Windsor can find no legal basis whatsoever for Judge Evans' position. Windsor cited three Supreme Court cases and an Eleventh Circuit case. Every Rule 60(b) case ever filed should be proof that a Rule 60(b) motion establishes a proceeding. (***Standard Oil Co. California v. United States***, 97 S. Ct. 31, 429 U.S. 17 (U.S. 10/18/1976); ***Gonzalez v. Crosby***; ***Reid v. Angelone***; ***Burke v. Smith***; ***Hazel-Atlas Glass Co. v. Hartford-Empire Co.***) (Aff #1 - ¶45.)

36. It is not frivolous for Windsor to claim that his Rule 60(b) motion was timely when the statute provides that it was absolutely timely and appropriate. The cases that Windsor researched indicate that Windsor's motion was timely on all six sections of Rule 60(b). The motion was filed just four months after the Final Order and Judgment. (Aff #1 - ¶46.)

37. It is not frivolous for Windsor to claim that he had valid arguments under Rule 60(b). Windsor addressed each of the six sections of Rule 60(b) with facts and case law after reviewing literally hundreds of Rule 60(b) cases. Windsor made similar arguments that many others have successfully made. (Aff #1 - ¶47.)

38. It is not frivolous for Windsor to claim that he believes there has been mistake, inadvertence, surprise, or excusable neglect that may relieve him from the effects of an order that is not valid. Windsor provided case law from the Supreme Court and the Eleventh Circuit to support his positions. Windsor's beliefs are uncontroverted facts. (***Wesco Prod. Co. v. Alloy Auto. Co.***; ***Pioneer***

Inv. Serv. Co. v. Brunswick Assocs. Ltd. P'ship; In re South Atlantic Financial Corp.) (Aff #1 - ¶48.)

39. It is not frivolous for Windsor to claim that newly discovered evidence is valid under Rule 60(b)(2). Windsor discovered new evidence, and the importance of that evidence was not controverted. The case law on Rule 60(b)(2) is clear about newly-discovered evidence, and Windsor meets the criteria. (***Waddell v. Hendry Co. Sheriff's Office.***) (Aff #1 - ¶49.)

40. It is not frivolous for Windsor to claim that his preparation of 1,905 pages of sworn testimony, 810 exhibits, a 3,528-page sworn affidavit under penalty of perjury before a notary with thousands of citations to evidence was not "cursory (performed with haste and scant attention to detail)." The facts cannot be disputed. The Twenty-Fifth Declaration of William M. Windsor ("Dec #25") filed in the District Court (Docket 462) is referenced herein as if attached hereto. (***Rozier v. Ford Motor Co.***) (Aff #1 - ¶50.)

41. It is not frivolous for Windsor to claim that he was denied the basic legal rights that he is supposedly guaranteed by the law of the land. (***Burke v. Smith; Adickes v. S.H. Kress & Co.***) (Aff #1 - ¶51.)

42. It is not frivolous for Windsor to claim under Rule 60(b)(4) that Judge Evans made an error of law because licensing by the State of Georgia pursuant to O.C.G.A. 43-4B that legalizes ticket sales and the First Sale Doctrine make the

injunction void as a matter of law and no longer prospectively equitable. (***Wexler v. Lepore***; *Rufo* v. ***Inmates of Suffolk County Jail***; ***Citizens of Humanity, LLC vs. Costco Wholesale Corporation***; ***Gorham Mfg. Co. v. Emery-Bird-Thayer Dry-Goods Co.***) (Aff #1 - ¶52.)

43. This issue is: Is it legal for a licensed Georgia ticket broker to sell any ticket that it can lawfully obtain? Georgia state law says it is legal. Judge Evans improperly claimed it wasn't legal. Judge Evans did not have the authority to disregard Georgia law. This makes the injunction void. "Rule 60(b)(4) motions ... are by definition either legal nullities or not." (***Carter v. Fenner***, 136 F.3d 1000, 1005 (5th Cir. 1998); ***Jackson v. Fie Corporation***, 302 F.3d 515 (5th Cir. 08/20/2002); ***United States v. Boch Oldsmobile Inc.***, 909 F.2d 657, 661 (1st Cir. 1990); ***Burke v. Smith***, 252 F.3d 1260, 1263 (11th Cir. 2001); ***Vinten v. Jeantot Marine Alliances, S.A.***, 191 F.Supp.2d 642 (D.S.C. 03/13/2002). (See ***United States v. $119,980***, 680 F.2d 106, 107 (11th Cir.1982).) (Aff #1 - ¶53.)

44. It is not frivolous for Windsor to claim that case law provides that making claims under Rule 60(b)(1)-(5) does not preclude a claim under Rule 60(b)(6). This is a legal issue, and there is extensive case law showing that multiple sections including 60(b)(6) have been considered without claiming that 60(b)(6) should be precluded. (***Pioneer Invest. Servs. Co. v. Brunswick Assoc. Ltd. Partnership***; ***Liljeberg v. Health Servs. Acquisition Corp.***; ***Klapprott v. United States***; ***Ackermann v. United States***, 71 S. Ct. 209, 340 U.S. 193 (U.S.

12/11/1950); *Rufo v. Inmates Suffolk County Jail*; *Polites v. United States*, 81 S. Ct. 202, 364 U.S. 426 (U.S. 11/21/1960); *R.C. v. Nachman*, 969 F. Supp. 682 (N.D.Ala. 06/16/1997); *State Street Bank and Trust Co. v. Inversions Errazuriz Limitada*, 374 F.3d 158 (06/15/2004); *Thompson v. Wydner*, No. 04 - 217 (E.D.Pa. 11/02/2005).) (Aff #1 - ¶54.)

45. It is not frivolous for Windsor to claim that fraud upon the court are appropriate under Rule 60(b)(6). There is case law on this. (See *United States v. Throckmorton*, 98 U.S. 61, 65-66, 25 L.Ed. 93 (1878); *Wilkin v. Sunbeam*, 466 F.2d 714, 717 (10th Cir.1972); *Luttrell v. United States*, 644 F.2d 1274, 1276 (9th Cir. 1980); *Keys v. Dunbar*, 405 F.2d 955, 957-58 (9th Cir. 1969) (per curiam).) (Aff #1 - ¶55.)

46. It is not frivolous for Windsor to claim that the uncontroverted evidence of massive wrongdoing by the Plaintiffs, their attorneys, and Judge Evans should qualify as extraordinary circumstances under Rule 60(b)(6). Windsor's facts have not been controverted. There has apparently never been a case with as much wrongdoing, and that should be as extraordinary as it gets. (*Wilkin v. Sunbeam*; *Zurich v. Matrix*; *Simon v. Nauvon*; *Klaprott v.United States*; *Crapp v. City of Miami Beach*; *Rice v. Ford Motor Co*; *L.P. Steuart, Inc. v. Matthews*; *Olle v. Henry & Wright*; *Liljeberg v. Health Services Acquisition Corp*; *Carter By and Through Carter v. United States*; *Toole v. Baxter Healthcare Corp*; *United States v. Certain Real Prop. Located at Route 1*; *(Toledo Scales Co. v. Computing Scale Co.)* (Aff #1 - ¶56.)

47. It is not frivolous for Windsor to claim that he feels that Judge Evans was wrong to refuse to recuse herself. This Court has no legal basis to find this frivolous. (Aff #1 - ¶57.)

48. It is not frivolous for Windsor to claim that a motion to reopen and a motion to recuse establish proceedings. The law is clear. (***United States v. Sciarra***; ***United States v. Day***.) (Aff #1 - ¶58.)

49. It is not frivolous for Windsor to claim that Judge Evans failed to rule on the legal sufficiency of his affidavit and failed to assume all factual allegations to be true as required by 28 U.S.C. 144. The Appealed Order proves that Judge Evans failed to do this. By law, Judge Evans was wrong. (***Wolfson v. Palmieri***; ***Berger v. United States***.) (Aff #1 - ¶59.)

50. It is not frivolous for Windsor to claim that his extremely comprehensive and detailed proof shows why a reasonable person would consider that Judge Evans was not impartial. The law is clear. Windsor would be delighted to conduct a survey of reasonable people to prove that the overwhelming majority would consider Judge Evans to be biased. (***McWhorter v. City of Birmingham***; ***Liljeberg v. Health Services Acq. Corp***.) (Aff #1 - ¶60.)

51. It is not frivolous for Windsor to claim that the Supreme Court ruling in ***Liteky v. United States*** should apply in this matter and that Judge Evans was wrong when using the extra-judicial

standard that the Supreme Court rejected in 1994. Judge Evans was wrong! (***Liteky v. United States***; ***Berger v. United States***; ***Action, Accountability, and the Judiciary -- United States Federal Judicial Recusal Reform In a New Century***. (Aff #1 - ¶61.)

52. Judge Evans failed to apply the average reasonable person standard when addressing the Motion to Recuse. It is not frivolous for Windsor to claim that federal statutes and case law of both the 11th Circuit and the Supreme Court should be mandatory on recusal. (Aff #1 - ¶62.)

53. It is not frivolous for Windsor to claim that the cumulative effect of facts considered together provide a basis for recusal as the Supreme Court has ruled. (See ***In re United States of America***; ***United States v. Mavroules***.) (Aff #1 - ¶63.)

54. It is not frivolous for Windsor to claim that Judge Evans erred by improper consideration of recusal under 28 U.S.C. 144. The law is clear. (***Christo v. Padgett***; ***United States v. Azhocar***; ***Recusal: Analysis of Case Law under U.S.C. §455 and 144***; ***U.S. v. Sykes***; ***James v. District of Columbia***; ***SEC v. Loving Spirit***; ***United States v. Alabama***; ***Berger v. United States***.) (Aff #1 - ¶64.)

55. The Appealed Order says: "Windsor has failed to file any certificate of counsel of record." Windsor is pro se, so there is no "counsel of record." Windsor was unable to obtain an attorney to represent him over fear of retribution for taking action against a federal judge. Windsor did provide a certificate of good faith. Windsor stated in a

Declaration #1 (Doc.362) filed on April 24, 2009: "I hereby state that my motions and declarations are made in good faith. James W. Penland has filed a motion to withdraw as my counsel." This was signed "William M. Windsor, Pro Se." Windsor has prepared another certificate of good faith (attached hereto as Exhibit I.) (Aff #1 - ¶65.)

56. Windsor argues that if the sworn motion and affidavit are not sufficient, the law should be modified or extended to reflect that pro se parties do not have to submit a certificate from "counsel of record," since there can be no such thing. History shows that the purpose of such a requirement was to ensure that the party, not the attorney, wanted to seek recusal. This does not apply with a pro se motion. It would be a violation of Windsor's legal and Constitutional rights to require that to qualify for protection under a statute, he has to meet an unnecessary requirement that has proven impossible to meet despite best efforts. (Aff #1 - ¶66.)

57. Windsor has met the specific requirements of 28 U.S.C. 144. Windsor provided a valid motion, sworn affidavit, and certificate of good faith. The motion was filed on a timely basis. Windsor's motion was material and stated with particularity, and it will convince a reasonable person that bias exists. (***United States v. Alabama***.) (Aff #1 - ¶67.)

58. Case law in other districts indicates that a pro se litigant who has no "counsel of record" may provide his own certificate of good faith. (***In re***

Beecher, 50 F. Supp. 530, 531 (E.D. Wash. 1943); See also ***Kersh v. Borden Chem.***, 689 F. Supp. 1457, 1459-1460 (E.D. Mich. 1988).) (Aff #1 - ¶68.)

59. There appears to be no legal precedent for the facts regarding recusal in this civil action in the Northern District of Georgia, Eleventh Circuit, or the Supreme Court. This civil action involves a pro se Plaintiff (Windsor) who is not represented by counsel. Windsor filed a valid, legally- and factually-sufficient motion. The motion was filed on a timely basis. Windsor filed the required Affidavit of Prejudice. The Affidavit was signed under penalty of perjury before a notary. Windsor filed a Certificate of Good Faith even though there is no "Counsel of Record." Windsor has been unable to locate a case with the same set of facts. It is not frivolous for Windsor to claim that he filed a certificate of good faith. This Court did this even though there is no legal precedent in this Circuit for such a position while the letter of the law is crystal clear. (Aff #1 - ¶69.)

60. It is not frivolous for Windsor to claim that his civil and Constitutional rights were violated. Our founding fathers must be turning over in their graves. (***Johnson v. Mississippi***; ***Peters v. Kiff***.) (Aff #1 - ¶70.)

61. Windsor filed the Motion to Reopen under Rule 60(b) and the Court's inherent powers. Judge Evans failed to address inherent powers. Judges have an obligation to consider motions based upon the law cited by the movant. It is not frivolous for Windsor to claim that Judge Evans had an

obligation to respond to Windsor's legal argument. (Aff #1 - ¶71.)

62. Windsor provided hundreds of pages of evidence of wrongdoing in his motions for sanctions, and it was not controverted. The hundreds of pages of evidence had merit and the motions were not frivolous. The only facts before the court were Windsor's facts. (Aff #1 - ¶72.)

63. The Plaintiffs filed Responses to Windsor's Motions for Sanctions on May 14, 2009. LR 7.1C., NDGa provides 10 days for Windsor to file a Reply. Windsor was denied that right. Judge Evans issued the Appealed Order on May 22, 2009 before Windsor could reply on the Motions for Sanctions and before Windsor's Reply on Motion to Reopen reached the judge. It is not frivolous for Windsor to claim that Judge Evans had an obligation to honor LR 7.1C., NDGa. (Aff #1 - ¶73.)

64. Windsor has cited hundreds of violations of the State Bar of Georgia Code of Professional Conduct as well as numerous violations of the Code of Judicial Conduct. (Doc.363;Doc.364;Doc.474.) This case casts SERIOUS doubt on the integrity of the judicial process, and this should have been a recusal consideration. It is not frivolous for Windsor to claim that this case casts doubt on the integrity of the judicial process. (***Liljeberg v. Health Servs. Acquisition Corp***; ***United States v. Microsoft Corp.***) (Aff #1 - ¶74.)

65. The **FRIVOLOUS ORDER** erroneously listed Windsor as a Counter-Claimant. Windsor never filed a counterclaim in Civil Action No. 1:06-CV-00714-ODE-1, so this was an error. (Aff #1 - ¶75.)

66. Windsor was shocked when the U.S.C.A. denied the appeals of Alcatraz and Windsor at Summary Judgment. Alcatraz cited six primary errors with 13 subsidiary errors. Windsor cited an additional 10 errors. Judge Hull and two other judges did not address the points of error, and the ruling makes absolutely no sense to Windsor. (The appeal briefs that were ignored previously by Judge Hull and the U.S.C.A. are attached as Exhibit J.) (Aff #1 - ¶76.)

67. Windsor asked that this Court not let that happen again. But it has. If Judges Hull, Marcus, and Pryor are honest, they will address each point in Windsor's appeal. (Aff #1 - ¶77.)

68. Windsor asks that this Court read the entire Affidavit of William M. Windsor attached hereto as Exhibit C because it includes information that is not included in this Motion to Reconsider due to page limits. (Aff #1 - ¶78.)

69. For the foregoing reasons, Windsor requests that this Court reconsider its order dated September 9, 2009 and grant the relief requested in the Appeal Brief. (Aff #1 - ¶79.)

Respectfully submitted, this 15th day of September, 2009.

William M. Windsor

s/_____

William M. Windsor
Pro Se

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. This motion complies with the type-volume limitation of Fed.R.App.P. 32(a)(7)(B) because:

__x__ this motion contains 20 pages, excluding the parts of the brief exempted by Fed.R.App.P. 32(a)(7)(B)(iii);

2. this brief complies with the typeface requirements of Fed.R.App.P. 32(a)(5) and the type style requirements of Fed.R.App.P. 32(a)(6) because:

__X__ this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in font size 14, Microsoft Times New Roman font.

/s_____

William M. Windsor
Pro Se

September 14, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have served the forgoing "MOTION TO RECONSIDER" by depositing a copy of the same in the United States mail in a properly addressed envelope with adequate prepaid postage thereon to ensure delivery to the following:

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This 15th day of September, 2009.

William M. Windsor

/s_____

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CONSTITUTIONAL PROVISIONS, TREATISES, STATUTES, ORDINANCES, AND REGULATIONS

11th Circuit Local Rule 42-4:

11th Cir. R. 42-4 Frivolous Appeals. If it shall appear to the court at any time that an appeal is frivolous and entirely without merit, the appeal may be dismissed.

28 U.S.C. § 144 Bias or prejudice of judge

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith

28 U.S.C. § 455 Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any

proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was

assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

FRCP Rule 60 Relief from Judgment or Order

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions.

The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) Timing.

A motion under Rule 60(b) must be made within a reasonable time — and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) Effect on Finality.
The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief.

This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. § 1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) Bills and Writs Abolished.

The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

Constitution of the United States – Article VI:

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.
This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be

bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Constitution of the United States – First Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Constitution of the United States – Fifth Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Constitution of the United States – Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Constitution of the United States – Eighth Amendment:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Constitution of the United States – Ninth Amendment:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Constitution of the United States – Fourteenth Amendment:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.